United States Department of Labor
Employees' Compensation Appeals Board

EDNA M. YOUNGER, Appellant	)	
and	)	**Docket No. 04-1760**
	)	**Issued: December 8, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Forest, VA, Employer	)	

Appearances:
Edna M. Younger, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated June 8, 2004 denying her emotional condition on the grounds that it was not sustained in the performance of duty. 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 she developed an emotional condition due to factors of her federal employment.

FACTUAL HISTORY

On September 9, 2002 appellant, then a 58-year-old postmaster, filed an occupational disease claim alleging that she first became aware of her disease on July 8, 2002 and first attributed it to work on June 28, 2002. Appellant stated that, while serving at the Forest, Virginia Station as officer-in-charge, she was not empowered by her manager to hold two

employees accountable for their actions. She stated that these employees retaliated by fabricating incidents which were not true, including accusing her of profane language. The manager believed the employees and removed appellant from duty.

Appellant submitted a statement alleging that as officer-in-charge she was responsible for supervising Mark A. Rosier, a delivery supervisor, who she believed was derelict in his duties, insubordinate and often requested annual leave. She stated that J. Mark Williamson, her manager, did not empower her to discipline Mr. Rosier or to make decisions regarding his annual leave. Appellant stated that Mr. Williamson denied two requests for letters of warning and held meetings in which he criticized her, alleging that she "talked down to people" and used profanity on the work floor. Appellant stated that Mr. Rosier continued to disregard her instructions and that Mr. Williamson implied that she was not accustomed to supervising difficult employees. Mr. Williamson denied her second request for a letter of warning to Mr. Rosier and informed her that she was not being considered for the permanent position as postmaster at that location.

Appellant stated that Cheryl Evans, sales associate, refused to follow direct orders and behaved improperly. She felt it necessary to have a discussion with Ms. Evans. Appellant alleged that Ms. Evans retaliated against her by accusing her of using profane language. As a consequence, Mr. Williamson relieved her of her temporary position. Appellant denied the allegations and requested two weeks of annual leave. She informed Mr. Williamson that she felt that he had attempted to discourage her from taking the temporary position.

Mr. Williamson completed a statement on September 18, 2002 and noted that appellant contacted him regarding Mr. Rosier's failure to perform work that she had assigned. Mr. Williamson admitted that he initially approved and then denied appellant's request for a letter of warning for Mr. Rosier after receiving an April 9, 2002 letter in which Mr. Rosier alleged that appellant caused a hostile work environment. He noted that the union representative had telephoned him regarding appellant's refusal to approve a leave request by Mr. Rosier. According to Mr. Rosier, appellant stated that she was holding this request to "see if he was doing his job or not" before granting the leave. Mr. Williamson stated that appellant also informed him that this was her reason for delaying response to the leave request. He stated that he met with appellant, Mr. Rosier and the union on April 19, 2002. According to Mr. Williamson, appellant and Mr. Rosier both admitted mistakes. He then denied the request for a letter of warning and informed appellant that she "talked down" to people including him.

In response to appellant's repeated telephone calls regarding Mr. Rosier and other employees, Mr. Williamson stated that appellant had been fortunate to work at a smaller office with a more family atmosphere. He asserted that appellant frequently called him up to two or three times a day.

Mr. Williamson denied appellant's May 15, 2002 request for a letter of warning for Mr. Rosier. He stated that at this time he informed appellant that she was not being considered for the permanent position of postmaster. Mr. Williamson admitted that this was a mistake, but alleged that his intention was to let her know that a new postmaster would be assuming responsibility for the office.

Mr. Williamson asserted that on June 21, 2002 Gary Hutchison of the threat assessment team contacted him as Mr. Rosier reported an incident between appellant and sales associate, Ms. Evans. Ms. Evans felt threatened as appellant had allegedly refused to grant her a union steward, cursed at her and asserted that she would deny all allegations. Appellant also allegedly stated that, if Ms. Evans wanted to play games, then appellant would win. As a result of these allegations and the above-described incidents, Mr. Williamson removed appellant of her office-in-charge assignment for the alleged improper conduct. Appellant disagreed and stated that the allegations were lies and that Ms. Evans and Mr. Rosier were "out to get her." Mr. Williamson instructed appellant to cooperate with the new officer-in-charge on June 24, 2002. Appellant telephoned Mr. Williamson shortly thereafter and noted that she wished to use leave from June 25 to July 5, 2002. Appellant returned to her permanent position as postmaster at the Hurt Station on July 8, 2002.

In an email dated September 6, 2002, Mr. Hutchison informed Mr. Williamson that appellant was disappointed that she was not recommended for the new permanent position as postmaster. He alleged that appellant stated that she should have been recommended based on her experience and qualifications.

Appellant submitted a statement regarding a June 19, 2002 discussion with Ms. Evans. She stated that Ms. Evans refused to aid in the counting of the vending machine which was due on June 13, 2002. Appellant eventually obtained aid from a former postmaster to count the vending machine. She then called Ms. Evans into her office for a discussion. Appellant alleged that a union representative was not necessary as she was not taking disciplinary action against Ms. Evans. She alleged that she informed Ms. Evans that her attitude needs to improve in a stern manner.

The record contains an unsigned statement dated June 21, 2002 regarding the conversation between appellant and Ms. Evans. Ms. Evans wrote to Mr. Williamson and reported that on June 19, 2002 appellant requested that she aid with and witness the count of the vending machine. Ms. Evans informed appellant that she had never performed this duty. Appellant did not believe this statement as Ms. Evans was in charge of the vending machine. She then instructed Ms. Evans to report to her office for an official discussion. Ms. Evans requested a union representative, which appellant denied and gave her a direct order to report for the discussion. Once in the office, Ms. Evans alleged that appellant used foul language and stated that she would deny that she had. She also refused Ms. Evans' request for a witness. Appellant allegedly stated that, if Ms. Evans wished to play games, appellant was a master and would ruin her. Ms. Evans stated that she considered appellant's statements to be provocative, harassing and abusive, but that she did not feel physically threatened.

In a letter dated November 8, 2002, the Office requested additional factual and medical evidence from appellant.

On November 4, 2002 Mr. Williamson stated that, while appellant was serving as officer-in-charge, her niece was murdered and appellant used a week of annual leave to be with her sister. He attributed appellant's mental condition to this incident.

Appellant submitted treatment notes beginning July 8, 2002 diagnosing a questionable syncopal episode, as well as emergency room record dated July 8, 2002 from Dr. J.D. Johnson listing appellant's complaints as chest pain and weakness in addition to light-headedness and near syncope.

In a form report dated September 17, 2002, Dr. Leonard S. Cohn diagnosed a possible hypoglycemic episode. He indicated with a checkmark "yes" that appellant's condition was due to her employment and stated stress related to work can cause blood sugar fluctuation." On December 6, 2002 Dr. Cohen stated that appellant experienced a syncopal episode while at work. He stated that appellant's test results were normal and that he determined that appellant's symptoms were psychogenic due to stress associated with work conditions.

Appellant responded to the Office's request for additional factual evidence with a statement dated December 8, 2002. She stated that Mr. Williamson contacted her by telephone on June 21, 2002 and informed her that two employees had complained about her use of profanity. He indicated that he believed the employees and relieved appellant of her duties as officer-in-charge. Regarding Mr. Williamson's previous statement that appellant was not being considered for the permanent postmaster position, she stated that, while she was shocked that she was not considered for the permanent postmaster position, she was not overly concerned with her failure to receive the promotion. She also noted that her niece died on May 18, 2002.

Appellant stated that Mr. Williamson placed her in a position without allowing her the authority to discipline the employees. She stated that he was aware that Mr. Rosier and Ms. Evans were incorrigible, but would not support or allow her attempts at discipline.

Mr. Williamson submitted an additional statement dated December 18, 2002. He asserted that appellant's removal from the officer-in-charge position was not disciplinary as appellant did not suffer a reprimand. Mr. Williamson stated that returning appellant to her regular duty position was done in the best interests of the service. He stated that on April 19, 2002 he informed appellant that Mr. Rosier had complained regarding appellant's treatment of him and her foul language. Ms. Evans made a second complaint about appellant's foul language on June 21, 2002 and Mr. Williamson informed appellant about this complaint on that date.

Mr. Williamson admitted that neither Mr. Rosier nor Ms. Evans were performing as they should, but stated that he did not believe them to be incorrigible.

By decision dated March 19, 2003, the Office denied appellant's claim finding that she had not substantiated a compensable factor of employment.

Appellant requested an oral hearing on March 31, 2003. She testified at the oral hearing on March 26, 2004. Appellant stated that, while serving as officer-in-charge at the Forest, Virginia Post Office from February 19 to June 2, 2002, she had difficulties persuading Mr. Rosier to do his job, and to follow her directions. She requested permission from Mr. Williamson to discipline Mr. Rosier, but he denied her requests. Appellant stated that as a result she had to perform both her and Mr. Rosier's duties. She stated that Mr. Rosier abused his leave, did not report as scheduled and took long lunches. Appellant noted that he was

subsequently demoted. She stated that Mr. Rosier refused to hire the personnel as appellant directed him twice before she placed her order in writing.

Appellant alleged that Ms. Evans was disrespectful to customers and that she refused to cooperate with her regarding counting stamps. She spoke sternly with Ms. Evans regarding her behavior and Ms. Evans became hostile.

Appellant stated that an employee, Shirley Jones, aided her in the mail count in Mr. Rosier's place, but that Ms. Jones was falsifying the rural carriers' documentation for mail.

Appellant also attributed her stress condition to the allegations of Mr. Rosier and Ms. Evans that she used profanity. Appellant denied these allegations and stated that Mr. Williamson's decision to believe the employees was an accusation that she lied. Appellant also stated that her stress-related condition was not due to the denial of the promotion.

On February 4, 2003 Dr. Cohen diagnosed anxiety disorder with syncopal episode due to stress at work.

Mr. Williamson responded to appellant's statements at the oral hearing and stated that he was previously unaware of appellant's allegation of overwork.

On April 18, 2004 appellant stated that she considered Mr. Hutchinson a friend and that she contacted him regarding her promotion in that status to report Mr. Williamson's insensitivity in informing her over the telephone that she was not being considered for the promotion.

In support of her claim, appellant submitted character statements. Ora S. McCoy, a retired postmaster, submitted a statement dated March 23, 2004 and noted that appellant complained of Mr. Rosier and the need for her to perform his duties. Ms. McCoy stated that she aided appellant one Sunday evening to make corrections to accounts that Ms. Evans had entered incorrectly. Cassandra D. Zurlippe, appellant's former supervisor, stated that appellant never used profanity to her knowledge in the 25 years that they had been acquainted. Thirteen of the employees at the Forest Post Office signed a statement that appellant was professional, efficient, accessible and cooperative. Clarence L. Franklin, a retired mailhandler and union official, submitted a statement that appellant had supervised over 60 employees and that she was of fine moral character. Appellant submitted other statements regarding her character and diligence.

On April 26, 2004 appellant reiterated her prior statements and denied allegations that she made mistakes or presumptions in regard to Mr. Rosier. She also stated that she was never rude nor condescending to employees or superiors. Appellant alleged that Mr. Williamson confused her with another employee.

By decision dated June 8, 2004, the hearing representative affirmed the Office's March 19, 2003 decision finding that appellant failed to substantiate compensable factors of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 his regular or specially 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall with the coverage of the Act.[3] While an administrative or personnel matter will be considered an employment factor where the evidence discloses error abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.[4] The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[5]

The failure to be promoted is not compensable under the Act because the lack of a promotion does not involve an employee's ability to perform his or her regular or specially assigned duties but rather constitutes the employee's desire to work in a different position.[6]

ANALYSIS

Appellant has attributed her emotional condition to actions of her supervisor, Mr. Williamson. She alleged that he failed to allow her to discipline employees as she wished, and that he improperly removed her from her temporary duty position based on false allegations of profanity by two of her subordinates. Mr. Williamson's determination denying appellant's request to issue letters of warning to Mr. Rosier fell within his administrative duties as appellant's supervisor. Appellant has not submitted any evidence that Mr. Williamson's denial

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[3] *James E. Norris*, 52 ECAB 93, 100 (2000).

[4] *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

[5] *Linda J. Edwards-Delgado*, 55 ECAB ___ (Docket No. 03-823, issued March 25, 2004).

[6] *Andrew J. Sheppard*, 53 ECAB ___ (Docket No. 00-1228, issued October 15, 2001).

of her request for disciplinary action was error or abuse and she has failed to establish that these actions were a compensable employment factor. Regarding appellant's removal from her temporary duty position as an officer-in-charge, Mr. Williamson stated that this was not a disciplinary action and that appellant's removal was for the good of the service. Appellant has not submitted any evidence that this action was erroneous or abusive. While appellant has submitted many statements asserting that she does not generally use profanity, these statements cannot address the specific instances with Mr. Rosier and Ms. Evans and cannot establish error in Mr. Williamson's decision that she used profanity in those instances or that he acted unreasonably in removing her from her temporary assignment.

Appellant has also attributed her emotional condition to performing Mr. Rosier's duties because he refused to work. While overwork can be a compensable factor of employment, it must be documented and established by the evidence in the record.[7] Appellant has not submitted any evidence substantiating that she performed Mr. Rosier's duties in addition to her own statements and therefore has not established overwork as a compensable factor of employment.

Although Mr. Williamson attributed appellant's emotional condition to the fact that she was not selected for the position of permanent postmaster at the Forest Post Office, appellant has denied this allegation. In any event, the Board has consistently held that denial of promotions is generally not a compensable factor of employment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[8]

CONCLUSION

The Board finds that appellant has not substantiated a compensable factor of employment regarding the denial of her promotion, the disagreement with her supervisor regarding proper discipline for a subordinate and her removal from her temporary duty position. Therefore, appellant has not met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

[7] *Goodman, supra* note 4 at 144.

[8] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member