

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

PATRICIA K. MARTIN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Santa Ana, CA, Employer**

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**Docket No. 03-1274
Issued: February 27, 2004**

Appearances:
Patricia K. Martin, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 21, 2002 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative decision dated February 5, 2003, which affirmed the denial of her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue on appeal is whether appellant established that she sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On November 21, 2001 appellant, then a 39-year-old letter carrier, filed a notice of traumatic injury alleging that on November 17, 2001 her supervisor, Pete Estrada, harassed her and threatened her job, thereby causing extreme stress and anxiety. She was off work from

November 17, 2001 until January 10, 2002. Upon her return to work, appellant was reassigned to a different duty station and no longer worked under Mr. Estrada.

In a January 10, 2002 statement, appellant addressed the basis for her claim. She related that she had been under medical restrictions, following a foot injury, that precluded her from working more than eight hours per day. Appellant alleged that on November 14, 2001 she asked Mr. Estrada for one half-hour of assistance to complete her delivery route, but that he denied her request and told her to learn to do eight hours of work without help. On November 15, 2001 she again asked Mr. Estrada for 30 to 40 minutes of assistance and was told that she had to deliver all the mail herself by 5:00 p.m. According to appellant, Mr. Estrada was aware that she could not work more than eight hours a day and would have to clock out by 4:30 p.m. She stopped her route that day at 4:30 p.m. and returned her undelivered mail to the duty station. Appellant said that on November 16, 2001 she was told to deliver the mail from the previous day within a 45-minute period by a different supervisor, identified as Terry Taylor. Appellant acknowledged that she questioned Mr. Taylor as to the length of the assignment based on the large amount of mail to be delivered. Another supervisor, Al Garcia, apparently overheard her discussion with Mr. Taylor. Mr. Garcia allegedly approached appellant to see why she was asking questions about her assignment and why she raised her voice to Mr. Taylor. Appellant, however, denied that she had raised her voice. She received a letter of warning for insubordination from Mr. Garcia based on the events of November 16, 2001.

When appellant reported to work on November 17, 2001, she was given a new route assignment by Mr. Estrada. She alleged that Mr. Estrada told her to do a better job on her new assignment "or else." He then pulled her into a meeting with another supervisor-in-training and a union steward identified as Rick Hanley. Appellant related that the meeting was an investigation into why she brought undelivered mail back on November 15, 2001. She was directed to answer only yes or no to the questions posed by Mr. Estrada. Appellant answered a few questions as directed, but felt the questions were designed to incriminate her and she refused to continue with the inquiry. She told Mr. Estrada that she would be happy to answer his questions if they were reworded. Appellant alleged that Mr. Estrada violently crossed out the questions and yelled, "[t]his meeting is over." After she left the meeting, she spoke with Mr. Hanley about the letter of insubordination. He agreed that appellant had not been insubordinate with Mr. Garcia and encouraged her to file a grievance. Mr. Hanley also advised her that she could use sick leave for stress. When appellant informed Mr. Estrada on November 17, 2001 that she was leaving work due to stress, he advised her that her leave request would not be approved until receipt of a proper medical documentation. She alleged that, when her physician provided the necessary medical documentation and requested that she be approved for disability, Mr. Estrada found the medical report to be insufficient. Appellant maintained that Mr. Estrada harassed her and eventually forced her to leave her job.

The employing establishment submitted a statement from Mr. Estrada denying appellant's allegations of harassment. He indicated that on November 17, 2001 he gave appellant a new route assignment and instructed her to maintain eight hours on the job. Mr. Estrada noted that appellant had been given a letter of warning for insubordination related to her work assignment on November 15, 2001. He acknowledged that, when appellant requested sick leave for stress, he asked her to provide proper medical documentation.

The record contains documentation pertaining to a grievance claim for harassment filed by appellant with the Equal Employment Opportunity (EEO) Commission. The EEO claim went to mediation. Appellant and the employing establishment entered a settlement agreement, whereby the parties agreed to transfer appellant to a different duty station effective February 28, 2002. The settlement specified that the agreement had been reached between the parties without prejudice and without any admission of discrimination by management.

In a decision dated April 18, 2002, the Office denied appellant's claim on the grounds that she failed to establish a compensable factor of employment and, therefore, her emotional condition was not sustained while in the performance of duty.

Appellant subsequently requested a hearing by letter dated April 23, 2002. The hearing was held on November 20, 2002, at which time she appeared and provided testimony with respect to her claim. Appellant later submitted a December 23, 2002 statement from Mr. Haney which related a conversation that he overheard between Mr. Estrada and appellant during a meeting that was held in April 2001. He alleged that Mr. Estrada stated to appellant as follows: "It will be my mission and my duty to see you and get you terminated from this job and this office.!"

In a decision dated February 5, 2003, an Office hearing representative considered appellant's claim as an occupational disease and not a traumatic injury claim since her allegations of harassment by her supervisor extended over more than one workday or shift. He determined that appellant failed to establish a compensable factor of employment and, therefore, affirmed the Office's April 18, 2002 decision, finding that appellant's emotional condition did not arise in the performance of duty.

LEGAL PRECEDENT

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹ the Board discussed at length the principles applicable to the adjudication of emotional conditions and the distinctions as to the type of employment situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. When an employee experiences an emotional reaction to his or her regular assigned employment duties or to a requirement imposed by the employment or fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such factors, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act.² On the other hand where the disability results from an employee's emotional reaction to employment matters, which are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded as not arising out of and in

¹ 28 ECAB 125 (1976).

² *James E. Norris*, 52 ECAB 93 (1999).

the course of employment and does not fall within coverage of the Act.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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 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.⁴ The Board will review the evidence to determine whether the alleged incidents and conditions of employment constitute compensable employment factors.

Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁵ To establish entitlement, appellant is required to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.

ANALYSIS

In this case, appellant alleged that she was harassed by her supervisor, Mr. Estrada, beginning with a meeting in April 2001, at which time he told her that it would be his mission to see that she was removed from her job. This statement was overheard by appellant's union steward, Mr. Haney. Although the Board accepts that Mr. Estrada made this remark, it does not appear from the totality of the record evidence to have been a threat or form of harassment.⁶ The record shows that appellant worked without incident for over six months following the remark, which indicates that the remark was not a threat made to appellant. The Board has considered the remark in conjunction with the actions of Mr. Estrada in November 2002 and find that he did not act abusively or in error in the administration of his supervisory duties or in his dealings with appellant.

On November 14 and 15, 2001 appellant alleged harassment by Mr. Estrada when he refused to provide her with assistance to complete her assigned route and she returned undelivered mail to her duty station. She alleged that she was then told on November 16, 2001 to deliver the undelivered mail from November 15, 2001 in a span of 45 minutes, which she considered to be an unreasonable work assignment. Contrary to appellant's allegations, however, the assignment of work and the manner in which a supervisor exercises his or her discretion falls outside the scope of the Act.⁷ This principle recognizes that a supervisor or

³ See *id.*; *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *James E. Norris*, *supra* note 2.

⁵ *Sherry L. McFall*, 51 ECAB 436 (2000); *Sherman Howard*, 51 ECAB 387 (2000).

⁶ The Board has recognized verbal abuse or threats as compensable factors under certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act. See *Fred Faber*, 52 ECAB 107 (2000).

⁷ See *Robert Knoke*, 51 ECAB 319 (2000); *Frank B. Gwozdz*, 50 ECAB 434 (1999).

manager must be allowed to perform their duties and that employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisor's management action will not be compensable absent evidence of error or abuse.⁸ The Board finds no factual basis for concluding that Mr. Estrada erred or acted abusively in denying appellant's requests for assistance on her route. Appellant's emotional reaction to her work assignment is deemed self-generated and noncompensable in the absence of error or abuse by the employing establishment.

Appellant also alleged that she was harassed by Mr. Estrada when he called her into a meeting on November 17, 2001 to issue a letter of warning of insubordination and inquired as to the undelivered mail returned to the station. The Board has held that stress from a reprimand involves a disciplinary issue that is considered administrative in nature and is not a compensable factor of employment.⁹ An administrative or personnel matter will be considered an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹⁰ In this case, there is insufficient factual evidence of record to find that Mr. Estrada erred or acted abusively in issuing the letter of warning concerning the undelivered mail. Although Mr. Estrada posed questions during the meeting which appellant wanted reworded and expressed his displeasure with appellant's work performance, the evidence does not establish error or abuse by the supervisor during this inquiry.

The Board also finds the evidence insufficient to establish error or abuse by the employing establishment in the issuing of the letter of insubordination. The mere fact that the letter was later rescinded, does not in and of itself establish error or abuse in the disciplinary action.¹¹ The settlement agreement entered into by the parties specifically stated there was no admission of guilt by the employing establishment with respect to the letter of insubordination. The employing establishment agreed to rescind the letter of insubordination and transfer appellant to another duty station but did not concede error or abuse. The fact that an employing establishment lessens a disciplinary action taken towards an employee does not establish that the employing establishment acted in an erroneous or abusive manner.¹² As noted, the employing establishment acted reasonably in assigning appellant's mail for delivery on November 15, 2001. The record revealed that appellant failed to complete her route and returned undelivered mail. The Board finds that the employing establishment acted reasonably in making an inquire and issuing a letter of reprimand.

Appellant has not satisfied her burden of proof to establish that she was harassed by the employing establishment. She has failed to establish a compensable factor of employment. Therefore, her emotional condition does not arise to the level of abuse while in the performance of duty.

⁸ See *Frank B. Gwozdz*, *supra* note 7.

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *James E. Norris*, *supra* note 2.

¹¹ See *Dennis J. Balogh*, 52 ECAB 232, 238 (2001).

¹² See *Sherry L. McFall*, *supra* note 5.

CONCLUSION

The Board finds that the appellant failed to establish that she sustained an emotional condition in the performance of duty. Consequently, her claim for compensation is denied.¹³

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2003 is affirmed.

Issued: February 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹³ Because the Board finds that appellant failed to establish a compensable work factor, the medical evidence is not considered in this decision.