

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNIE ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 03-1775; Submitted on the Record;
Issued February 4, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established an emotional condition in the performance of duty.

On January 26, 2001 appellant, a 55-year-old data technician, filed an occupational disease claim alleging that on October 1, 2000 she first realized her depression, anxiety and severe migraine headaches were employment related. Appellant stopped work on November 13, 2000 and has not returned.

In a statement dated January 26, 2001, appellant alleged various incidents that she believed constituted harassment and discrimination by her supervisor as well as her attempts to keep up with her work. She also alleged that her supervisor improperly removed a chair, that her supervisor arranged appellant's removal from the Diversity Committee and that her request for family medical sick leave was denied. She alleged that her job duties of inputting time, answering questions from workers and supervisors, running time reports, researching policy and filing documents caused her stress. Appellant also alleged that her supervisor treated her as a scapegoat, that she would be instructed to perform something one way and then her supervisor would deny having instructed her that way and she was constantly criticized by her supervisor. Appellant alleged that her supervisor refused to show a relief technician how to pull a report as well as refusing appellant's request to train the relief technician. She also alleged that her supervisor used abusive language and treated her with hostility.

Appellant noted that her supervisor refused her sick leave under the Family Medical Leave Act and put her on leave without pay despite having the required documentation. On July 2, 1999 appellant indicated that she could not log onto the timekeeping system and that another technician was at her desk. She noticed that her Novell software had been deleted, which she assumed was due to the other technician trying to fix her computer. On July 3, 1999 her supervisor attacked her for not doing work when appellant had performed more work than her assignment called for. Appellant's supervisor sent an email out on July 8, 1999 requesting supervisors and employees to report any unprofessional behavior. On July 16, 1999 appellant

was told to watch a tape when she requested to go home due to her burglar alarm being set off and that her supervisor subsequently wrote her up for failing to follow instructions because she did not watch the tape. Her supervisor berated her on July 17, 1999 for failing to perform enough work and on July 19, 1999 wrote her up for failing to follow instructions as appellant failed to read a handout given to her. Appellant stated that her supervisor told her everyone disliked her and wanted appellant to leave on July 23, 1999. On October 5, 1999 appellant alleged that her supervisor pulled her off the clock in retaliation for what she had written in an Equal Employment Opportunity (EEO) claim she had filed. Her stress increased because she was the only Tour II technician when the other technician took a lot of leave in the winter and spring.

The employing establishment responded to appellant's allegations of harassment and discrimination on April 4, 2001. Linda C. Clay, General Supervisor, denied harassing appellant and detailed complaints received regarding appellant's behavior and performance issues.

In a report dated January 24, 2001, Dr. Antoine Jean-Pierre, an attending Board-certified psychiatrist, diagnosed depression. He noted that appellant had a preexisting depression which had been aggravated by harassment from her supervisor.

On January 19, 2002 the Office of Workers' Compensation Programs informed appellant that the evidence was insufficient to establish her claim. The Office advised appellant of the type of factual and medical evidence needed to support her claim and gave her 30 days to submit the evidence. Appellant did not respond.

On March 1, 2002 the Office denied appellant's claim on the basis that she failed to establish that her emotional condition was sustained in the performance of duty.

Appellant requested a hearing before an Office hearing representative which was held on December 5, 2002.

In a decision dated April 8, 2003, the hearing representative found that appellant failed to establish any compensable factors of employment and affirmed the denial of her claim.

The Board finds that appellant did not sustain an emotional condition in the performance of duty.

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 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

¹ 5 U.S.C. §§ 8101-8193.

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 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 a 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

The Office found that appellant failed to establish any compensable work factors under the Federal Employees' Compensation Act. The Office explained to appellant what factual support was necessary to establish that the employing establishment erred or acted abusively in its managerial functions or that she was harassed or discriminated against or that her stress was due to trying to keep up with her work.

The Board has long held that allegations alone by a claimant are insufficient without probative and reliable evidence to substantiate the allegations.⁷ The claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that she believes caused or adversely affected her condition.⁸ Personal perceptions and feelings alone are not compensable under the Federal Employees' Compensation Act.⁹

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

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

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

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

⁶ *Id.*

⁷ *Joe E. Hendricks*, 43 ECAB 850 (1992).

⁸ *Peggy Ann Lightfoot*, 48 ECAB 490 (1997); *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ *Earl D. Smith*, 48 ECAB 615 (1997).

Appellant attributed her emotional condition to the various described incidents, which she alleged constituted harassment, discrimination and reprisal for filing an EEO complaint. She provided detailed statements of the actions by her supervisor. Appellant noted that she was yelled at, unjustly accused of violating policy and held to different standards than her coworkers. 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 Federal Employees' Compensation 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 her allegations with probative and reliable evidence.¹⁰

Appellant alleged harassment and retaliation on the part of her supervisor and that her supervisor had her removed from the Diversity Committee in retaliation for filing a complaint against her. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹¹ However, for harassment to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that the alleged harassment did, in fact, occur. Mere perceptions of harassment are not compensable under the Federal Employees' Compensation Act.¹² Appellant has not presented evidence of harassment by her supervisor. She failed to submit sufficient evidence to establish that her supervisor was responsible for her removal from the Diversity Committee. The evidence shows that the employing establishment removed her due to business reasons. Appellant has failed to establish a compensable factor of employment in this respect.

Appellant has also cited specific administrative actions by her supervisors as contributing to an emotional condition. She alleged that she was denied union representation, that her chair was removed, that on June 6, 2000 she was required to provide medical documentation before she could return to work, and that she was initially charged with being absent without leave for July 12, 2000. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.¹³ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.¹⁴ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ Although appellant filed an EEO complaint regarding her alleged harassment, no probative

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994).

¹¹ *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹³ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁴ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, *supra* note 11.

¹⁵ *Anna C. Leanza*, 48 ECAB 115 (1996).

evidence of error or abuse in an administrative matter was submitted. She reported an increase in her workload; to the extent that she is alleging overwork, she did not provide pertinent evidence to support the claim. In an April 4, 2001 statement, Ms. Clay indicated that there was no increase in the workload.

In regard to appellant's allegations regarding the denial of family medical leave requests and disciplinary actions, the Board finds that these allegations relate to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.¹⁶ As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation 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.¹⁷ In this case, appellant has submitted no witness statements or other evidence to document that her supervisor erred or acted abusively in demoting her, denying leave requests, assigning work or other administrative actions. Without such supporting evidence, appellant has failed to establish any factor of employment.

Appellant also alleged that she experienced stress in the performance of her day-to-day duties, which included inputting time, answering questions from workers and supervisors, running time reports, researching policy and filing documents. Ms. Clay, appellant's supervisor, provided corroboration that appellant's duties included running time reports, filing documents, inputting time and assisting supervisors and workers as needed. The Board has held that stress resulting from situations in which an employee is attempting to meet his or her position requirements are compensable.¹⁸ The Board finds that the evidence of record is sufficient to establish a compensable factor under *Cutler* based on appellant's regular and specially assigned work duties. As appellant has attributed her stress, at least in part, to her regular or specially assigned work duties, she has established a compensable employment factor.

Appellant has established as a compensable factor of employment that her regularly assigned work duties caused her stress. However, her burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Federal Employees' Compensation Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁹

¹⁶ See *Janet I. Jones*, 47 ECAB 345 (1996); *Jimmy Gilbreath*, 44 ECAB 555 (1993); *Apple Gate*, 41 ECAB 581 (1990); *Joseph C. DeDonato*, 39 ECAB 1260 (1988).

¹⁷ *Martha L. Watson*, 46 ECAB 407 (1995).

¹⁸ *Trudy A. Scott*, 52 ECAB 309 (2001); *Robert Bartlett*, 51 ECAB 664 (2000).

¹⁹ See *William P. George*, 43 ECAB 1159, 1168 (1992).

The medical evidence of record does not causally relate her emotional condition to her regularly assigned duties of inputting time, answering questions from supervisors and workers, running time reports, researching policy and filing documents. In his January 24, 2001 report, Dr. Jean-Pierre attributed appellant's condition to harassment by her supervisor. As noted above, the Board has found that appellant did not substantiate her allegation of harassment as a compensable factor of employment. Appellant has not submitted medical evidence that causally relates her medical condition to the accepted factor of employment, that her regularly assigned duties of inputting time, answering questions from supervisors and workers, running time reports, researching policy and filing documents caused her stress. Therefore, appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

The decision of the Office of Workers' Compensation Programs dated April 8, 2003 is hereby affirmed, as modified.

Dated, Washington, DC
February 4, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member