United States Department of Labor
Employees' Compensation Appeals Board

SANDRA LEE, Appellant	)	
	)	**Docket No. 03-2118**
and	)	**Issued: January 5, 2004**
U.S. POSTAL SERVICE, Detroit, MI, Employer	)	

Appearances:
Sandra Lee, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 27, 2003 appellant filed an appeal from an Office of Workers' Compensation Programs decision dated June 2, 2003 denying the claimant the merits. 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 established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 7, 2003 appellant, then a 55-year-old mail processor, filed an occupational disease claim alleging that she sustained major depression due to factors of her federal employment. She stopped work on September 14, 2002 and did not return.

In a statement accompanying her claim, appellant attributed her condition to the coarseness and cruelty of management at the employment establishment. She related that management changed her start time, her days off and her work location. Appellant further noted that a supervisor threw out an accident report and that she was forced to "sit in a coat room for two and a half years" following surgery. She also related that coworkers verbally and physically assaulted her. Appellant further noted that her work area had diesel exhaust, dust, poor lighting and trash on the floor and that the tap water smelled of sewage. She further related that she experienced stress from "shrill ear piercing sounds" from mail processing machines and a "deafening loud intercom building system." Appellant also noted that she was inappropriately forced to push and pull all purpose containers and bulk mail containers.

By letter dated February 20, 2003, the Office requested additional information from appellant regarding her claim. In response, she submitted a letter of warning that she received on June 20, 1997 for failing to observe safety rules. Appellant further submitted an accident report dated December 20, 1997 which described an incident which occurred when a coworker, David Northcress, struck appellant on her cheek with a sack that he was placing on a conveyor. The report noted that appellant told witnesses that she was fine and did not receive medical treatment. Appellant further submitted a grievance settlement dated December 29, 1998 which provided that management should complete and process a Form CA-1 when requested by employees regardless of whether the supervisor agreed that an injury occurred. She also submitted multiple other grievances which were either settled without fault or found moot.

In a statement received by the Office on March 21, 2003, appellant related that she experienced the following incidents of harassment: on March 20, 1995, a supervisor performed extra inspections on her route; on May 15, 1996, the postmaster threatened to fire her; on June 19, 1996, a supervisor and the postmaster took her to the doctor because she wore a sunhat; on May 5, 1997, her supervisor told her she was "slow;" and on June 19, 1997, she received a letter of warning for drinking soda. Appellant also alleged that her supervisor referred to her inappropriately as "baby" and "sweetie." Appellant also contended that on June 10, 1997, a supervisor told her she was not doing her work; on July 31, 1997, a coworker threatened her with a "pink slip;" in August 1997 a coworker threatened to kill her and hit her with a belt to make her work harder; and on November 11, 1997, a coworker counted how much work she had accomplished. Appellant further related that, after she transferred to a new work location, she was subjected to "malicious animosity" after she requested a locker. She also described a supervisor who followed her everywhere during the period March 29, 1999 to June 26, 2000 and a supervisor who assigned her to complete tasks left unfinished by her coworkers.

In her statement, appellant also alleged that she experienced the following incidents of sexual harassment: from July 1997 to February 1998 a coworker, Paul, threatened her since she would not date him; James Reed stared at her in a sexual manner; two supervisors asked her to have drinks with them; and a coworker, Robert Battle, sexually harassed her all the time. Appellant further related that, when she

worked in the coat room after March 9, 2001, men would make sexual comments and attempt to kiss her on her way to the locker room.

Appellant also described numerous instances of verbal and physical abuse as follows: on October 22, 1997, James Miller shouted at her that she cased mail incorrectly; in April 1997, a supervisor, Peggy Harrison, screamed at her in rage, on August 5, 1998, a coworker called her "stupid" and a supervisor, Tonya Garner, maliciously told her not to "give me no never mind." Regarding physical assaults, appellant related that, on July 17, 1997, a coworker, Paul, hit her in the ribs; on October 29, 1997, Paul grabbed her shoulders; on February 27, 1998, Paul swung a fist in her face; and on August 10, 1997, Ron, a coworker, "slugged downward at my head knocking my ballcap off." Appellant further alleged that on December 18, 1997, Dave Northcross "threw a sack of parcels deliberately striking my head;" on June 10, 1997, a coworker backhanded her in the face, on October 19, 1997, a coworker squeezed her arm, and on January 6 and 28, 1998, coworkers grabbed her ribs from behind. Appellant also described her exposure to exhaust fumes from diesel trucks which she related caused sinus infections and congestion.

In a letter dated March 27, 2003, the Office requested that the employing establishment review and comment on appellant's statement within 30 days. The employing establishment did not respond within the time allotted.

By decision dated June 2, 2003, the Office denied appellant's claim on the grounds that she did not establish an emotional condition causally related to her federal employment. The Office found that appellant had not established any compensable factors of employment.

LEGAL PRECEDENT

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 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

[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 125 (1976).

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]

ANALYSIS

Appellant primarily attributed her depression to harassment and sexual harassment by supervisors and coworkers during the period 1995 to 2001. 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.[7] 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.[8] In this case, appellant described multiple incidents which she believed to constitute harassment, including sexual harassment, by her supervisors and coworkers. However, she has not submitted sufficient corroborating evidence to show that the described events either occurred as alleged or that the events constituted harassment. Appellant submitted a grievance settlement in which management agreed that supervisors would complete the Form CA-1 when requested by employees; however, the terms were not specific to appellant or a particular manager. The remaining evidence submitted by appellant consists of copies of grievances that were either settled without fault or found to be moot, and, thus, do not establish harassment on behalf of supervisors or coworkers at the employing establishment. Appellant has submitted no other corroborating evidence, such

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

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

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

[6] *Id.*

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

[8] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

as witness statements, supporting that she was harassed or sexually harassed, by either her managers or coworkers and, thus, has not established a compensable factor of employment.[9]

Appellant also described various incidents of verbal abuse by coworkers and supervisors, including being yelled at and called stupid. The Board has held that verbal altercations, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable factor of employment.[10] Although verbal abuse may be compensable in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[11] In this case, appellant has not submitted any factual evidence supporting that any of the alleged statements actually were made. As appellant has not submitted any evidence to corroborate her allegations of verbal abuse by supervisors and coworkers, she has not established a compensable factor of employment.

Appellant further contended that coworkers hit, grabbed, squeezed and threw parcels at her. Physical contact arising in the course of employment, if substantiated by the evidence of record, constitutes a compensable employment factor.[12] In support of her claim, appellant submitted an accident report confirming that on December 18, 1997 Mr. Northcross hit her in the head with a parcel; however, the report noted that appellant was at fault in the incident, which it described as an accident, because she was not paying attention. The accident report does not show that Mr. Northcross deliberately hit her in the head with a parcel as alleged by appellant. Appellant has submitted no other evidence corroborating her allegations that the described physical contact occurred as alleged and, thus, her allegations are insufficient to support her claim.

Regarding appellant's allegations that the employing establishment improperly changed her hours, transferred her to a new location, issued erroneous disciplinary actions, improperly assigned work duties and unreasonably monitored her activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employees regular or specially assigned work duties and, thus, do not fall within coverage of the Act.[13] Although the handling of disciplinary actions, transfers, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of

[9] Appellant also attributed her emotional condition to a change in work days and shift. However, while a change in duty shift may constitute an employment factor in this case, appellant alleged that the change showed harassment on behalf of the employing establishment rather than that the actual change caused her condition. Thus, appellant has not established a compensable work factor. *Elizabeth Pinero*, 46 ECAB 123 (1994).

[10] *Janet D. Yates*, 49 ECAB 240 (1997).

[11] *Christophe Joliceur*, 49 ECAB 553 (1998).

[12] *Alton L. White*, 42 ECAB 666 (1991).

[13] *See James E. Norris*, 52 ECAB 93 (2000); *Marguerite J. Toland*, 52 ECAB 294 (2001); *Robert W. Johns*, 51 ECAB 137 (1999); *Alice M. Washington*, 46 ECAB 382 (1994).

the employee.[14] However, the Board has also 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.[15] In this case, appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

With regard to appellant's complaints of noise exposure from machines at work and a loud intercom system, everyday noise encountered as part of appellant's regular or specially assigned duties would constitute an employment factor.[16] She also described other problems with her physical environment, including exposure to diesel fumes, dust and trash. However, in this case, appellant has not submitted sufficient factual evidence to substantiate that she was exposed to noise, diesel fumes, dust or trash during the course of her employment. Therefore, appellant has not established a factual basis for her allegations.

As appellant has failed to establish any compensable factors of employment, the Board finds that the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

[14] *Id*.

[15] *See Richard J. Dube*, 42 ECAB 916 (1991).

[16] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2003 is affirmed.

Issued: January 5, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member