

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. EDWARDS-DELGADO and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 03-823; Submitted on the Record;
Issued March 25, 2004*

DECISION and ORDER

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

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

On November 10, 2000 appellant, then a 46-year-old team leader in the business service network, filed an occupational disease claim alleging that she sustained an emotional condition due to factors of her federal employment. She stopped work on May 8, 2000. Appellant stated that a newspaper article published on May 8, 2000 destroyed her professional reputation, leading to humiliation of herself and family.¹

Appellant related that, while on maternity leave in 1991, she received a telephone call from her boss, the Director for Marketing in Tampa, and advised of an inquiry by the Federal Times concerning the relationship between the area division manager and appellant. She related that the accusation was false and that her husband, a superintendent of postal operations in safety, had to endure numerous jokes prior to his retirement in 1992. While the truth concerning the identity of the parties came out the rumors never seemed to die. Appellant was promoted in 1994 to the position of Manager of Sales of the Suncoast District and noted that Ms. Knight was Manager of Customer Service Support. In 1998, under a reorganization, the two positions were combined. Appellant alleged that when she advised Ms. Knight that she would be applying for the position, Ms. Knight went "ballistic" and said she would get even with her. Appellant alleged that Ms. Knight started spreading rumors and used obscene language to call appellant names. Appellant stated that when Ms. Knight did not get the marketing position, Ms. Knight filed an Equal Employment Opportunity (EEO) complaint which was eventually settled. Appellant alleged that she treated Ms. Knight in a professional manner, but became angry when

¹ Appellant submitted a May 8, 2000 USA Today article which discussed a settlement in a discrimination complaint brought against Robert Davis, Vice President of area operations for the Southeast, by Gloria Knight. Ms. Knight accused Mr. Davis of promoting a woman with whom it was alleged he had a personal relationship. The article noted that the settlement was not an admission of the charges made and appellant was not named in the article.

she learned of a settlement of Ms. Knight's EEO case in which the employing establishment paid over \$50,000.00. She alleged that Ms. Knight was a poor employee whose mismanagement had cost the employing establishment over half a million dollars to settle a customer lawsuit. Appellant stated that the newspaper article describing the EEO settlement brought back old wounds.

Appellant alleged that she had to endure a hostile working environment and misconduct during her tenure as manager of marketing by District Manager Michael Jordan. She alleged improper use of postal funds, misuse of sports tickets, alcohol abuse, obscene language and degrading behavior toward women. Appellant alleged that Mr. Jordan required that men and women sit together and that women were not allowed to ride together to events without a male present. Appellant contended that she was forced from her position, did not receive a bonus in the year 2000 and noted that she brought an EEO complaint. Appellant indicated that she previously received treatment for depression in 1992 and for heart palpitations and dizziness in 1996.

On December 22, 2000 the employing establishment controverted appellant's claim. Lynn Yut-Rampa, an injury compensation specialist, noted that appellant had worked under Mr. Jordan since 1993 and was promoted twice to the highest level a manager could attain. Ms. Yut-Rampa stated that appellant did not submit evidence documenting alleged improprieties by management or obscene or degrading comments and that appellant's reference to newspaper articles involving the settlement of an EEO complaint did not mention her name. Ms. Yut-Rampa noted that, regarding a bonus check, administrative decisions on awards were not part of appellant's duties. Appellant was offered a detail by Mr. Jordan to a top level executive position, a position she held for four months. When she returned from the detail, appellant declined an offer to work for a manager other than Mr. Jordan.

Appellant submitted additional evidence, including a copy of an April 2, 2001 settlement agreement pertaining to her EEO complaint and statements from several co-employees. She also submitted copies of e-mails with Mr. Jordan, pertaining to tickets and invitations extended to the employing establishment and rules regarding meals and refreshments incurred in the performance of employing establishment business.² The EEO settlement agreement noted, in part, that the parties mutually agreed that it did not constitute an admission of any error, fault or legal violation with respect to the subject matter of the complaint.

In a January 19, 2002 decision, the Office found that appellant did not establish that she sustained an emotional condition arising in the performance of duty. The Office noted that appellant had not established a compensable employment factor with regard to her allegations.

On February 15, 2002 appellant requested a hearing before an Office hearing representative, which was held on October 23, 2002. Appellant submitted an additional statement from a co-employee pertaining to Mr. Jordan's conduct at various agency dinners and social occasions.

² An October 14, 1998 e-mail from appellant to Mr. Jordan advised of the receipt of an invitation (two tickets) from the Tampa Bay Buccaneers Marketing Department to join in their business suite for a professional football game and inquired as to who should attend.

By decision dated January 15, 2003, the Office hearing representative affirmed the January 19, 2002 decision. The hearing representative found that appellant did not establish a compensable factor of employment arising from the performance of her federal job duties.

The Board finds that appellant has failed to establish that her emotional condition arose from compensable factors of her federal employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to a claimant's employment with the federal government. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employment or by the nature of the work.³ The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disability resulting from an employee's feelings of job insecurity or the desire for a different position, promotion, or job transfer does not constitute personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act.⁴

Actions of a claimant's supervisors or coworkers, which are characterized as discrimination or harassment may constitute a compensable factor of employment. However, for discrimination or harassment to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination alleged did, in fact, occur.⁵ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁶ An employee's allegation that she was harassed or discriminated against is not determinative of whether or not the alleged incident of harassment or discrimination occurred.⁷ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.⁸ Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁹

In the present case, appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties as a district manager with the employing establishment. Rather, she has alleged discrimination and a hostile work environment by

³ See *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*; see also *Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁵ *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁶ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

⁷ See *William P. George*, 43 ECAB 1159 (1992).

⁸ See *Frank A. McDowell*, 44 ECAB 522 (1993).

⁹ *James E. Norris*, 52 ECAB 93 (2000).

employing establishment managers and personnel. The Board must look to the evidence of record to determine whether appellant's allegations are substantiated by probative and substantial evidence.

Appellant attributed her emotional condition to the publication of a May 8, 2000 newspaper article concerning the settlement of an EEO complaint brought by Ms. Knight, a former coworker, stating that it caused humiliation and brought back old wounds. The publication of the newspaper article is not a matter related to the performance of appellant's federal employment job duties nor does it constitute an administrative or personnel action taken by the employing establishment.¹⁰ As such, the publication of the newspaper article does not constitute a compensable factor of her employment and her reaction to the article must be considered as self-generated. Appellant referred generally to rumors and jokes circulated concerning her relationship with Bob Davis, then a division manager. The Board finds, however, that appellant did not submit sufficient evidence to establish a factual basis for this allegation and it does not constitute a compensable factor of employment.¹¹

Appellant alleged a hostile work environment caused by Mr. Jordan after he became District Manager, contending misuse of postal funds, sport tickets, alcohol and degrading behavior against women. She submitted statements from several former coworkers, including Holly S. Myers and Ronald Drake. Ms. Myers indicated that she observed appellant and Mr. Jordan at several social and business situations and that Mr. Jordan was considered a "party man" while at postal forums, a term which Ms. Myers found embarrassing. She noted that appellant's office space was occupied after appellant left for a detail assignment to Memphis, Tennessee. Mr. Drake addressed rumors in the 1990's that appellant received promotions based on her relationship with Mr. Davis. He noted that appellant was selected over Ms. Knight for promotion by Mr. Davis following consolidation of their two management positions. Mr. Drake stated that appellant advised him that Mr. Jordan had instructed women members of the district staff to ride to functions with men and to not sit together at meetings and functions. He indicated that appellant's office was occupied following her detail to Memphis and that she was uncomfortable with processing paperwork related to social occasions when Mr. Jordan took postal customers to dinner and alcohol was purchased. The Board has carefully reviewed the evidence of record and finds that it is not sufficient to establish harassment or retaliation by Mr. Jordan or other management officials. The statements provided are very general in nature and not specific as to any rumors or jokes made, the specific instances of verbal or obscene language, the parties involved or the dates on which such instances occurred. At best, the statements reflect appellant's disagreement with some management decisions made by Mr. Jordan. The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act.¹² This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employees will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager

¹⁰ See *Lillian Cutler*, *supra* note 3; *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991); see also *Anthony A. Zarcone*, *supra* note 4.

¹¹ See *Anne L. Livermore*, 46 ECAB 425 (1995).

¹² See *Frank B. Gwozdz*, 50 ECAB 434 (1999).

will not be compensable absent evidence establishing error or abuse. The record discloses appellant's disagreement with Mr. Jordan's instructions that women not ride alone to postal functions or sit among one another at business or social meetings. This does not establish error or abuse in any safety considerations made by Mr. Jordan concerning employee travel or insisting that postal managers mingle during social and business functions. Appellant's dislike of the manner in which Mr. Jordan socialized, purchased dinners or alcohol for postal customers, or dispersed tickets to athletic or social events to which the employing establishment was invited does not establish error or abuse on his part. The fact that her office was occupied or utilized by others during her four-month detail to Memphis does not constitute a compensable factor of employment. The statements of her former coworkers do not substantiate any of appellant's allegations of verbal abuse or obscene language directed at her by Mr. Jordan or Ms. Knight.

Appellant's allegations were investigated by the employing establishment following her EEO complaint. By letter dated December 19, 2000, counsel for the employing establishment advised appellant's attorney that her allegations were not well taken and declined to enter into negotiations to settle her claims. A settlement agreement was subsequently made on April 2, 2001 in which appellant settled all claims of discrimination, harassment and reprisal against the employing establishment. The employing establishment agreed to pay appellant's attorney fees and \$4,500.00 for medical bills incurred by appellant from April 1, 2000 until January 11, 2001. The parties agreed that the settlement did not constitute an admission to any wrongdoing or fault with regard to the subject matter of appellant's allegations. For this reason, the EEO settlement agreement does not substantiate appellant's allegations pertaining to discriminatory actions or harassment by employing establishment officials.¹³

The Board finds that appellant has not established a compensable factor of employment with regard to her allegations. For this reason, the Office properly denied her claim for compensation.

¹³ See *Constance L. Galbreath*, 49 ECAB 401 (1998).

The January 15, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, March 25, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member