United States Department of Labor
Employees' Compensation Appeals Board

JULIA Y.J. LEE, Appellant	)	
and	)	**Docket No. 04-591**
	)	**Issued: May 27, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Honolulu, HI, Employer	)	

Appearances:
Julia Y.J. 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 30, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 30, 2003. 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 sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On June 30, 2000 appellant, then a 45-year-old window clerk, filed an occupational disease claim alleging that on June 17, 2000 she developed stress and anxiety after being harassed by management personnel. She stopped working on June 19, 2000.

Appellant submitted statements dated June 30 and November 14, 2000 alleging that she was subjected to harassment on June 17, 2000, when Rodney Kawagoe, her supervisor, turned

out the lights at the facility in which she worked as her shift was ending and yelled at her to "hurry up, let's go." On October 18, 2000 Thomas K. Fujioka, a supervisor, and her union steward had a meeting in which Mr. Fujioka required that appellant submit additional medical documentation regarding her capability to work as a window clerk eight hours a day. Appellant alleged that management did not take any disciplinary actions against Mr. Kawagoe for his actions of June 17, 2000. Finally, appellant indicated that she was dissatisfied with the manner in which her compensation claim was handled.

Pauline Akamine-Adams noted that appellant informed her that on June 17, 2000 her supervisor turned off the lights while appellant was attempting to finish her job duties for the day. Appellant also informed her that a customer filed a complaint against appellant for rude behavior.

In a statement dated November 24, 2000, Mr. Fujioka noted that on two occasions appellant was unable to complete her eight-hour work shift due to crying spells. On October 14, 2000 at 11:30 a.m. appellant requested permission to leave at 2:00 p.m., which he approved. Mr. Fujioka noted that appellant's window was closed after 20 minutes and appellant was discovered in the rest room crying. On October 18, 2000 appellant clocked in at 9:45 a.m. and then went to the rest room for one hour and provided no explanation for not being present at her workstation. Mr. Fujioka indicated that appellant's behavior was affecting his operation as other clerks had to perform her work and the customers were not getting the service they deserved. On October 18, 2000 he had a discussion with appellant and a union steward regarding her behavior and requested that she submit medical documentation supporting her ability to work as a window clerk eight hours a day. Mr. Fujioka indicated that he was merely performing his administrative duties of managing the work force.

In a statement dated December 12, 2000, Mr. Kawagoe, advised that, on June 17, 2000, the last carrier checked in his accountables at 5:30 p.m., and appellant had 45 minutes to close out the operation at the accountable cage. At 6:15 p.m., he started to close down the station and he called out to appellant and asked her if she was ready to go home. Appellant indicated that she had to retrieve items from the locker room. Mr. Kawagoe proceeded to turn out the day lights, leaving the evening lights on, which produce the same amount of light as if the station were on emergency power. He did not turn off the locker room lights where appellant was retrieving her belongings. Mr. Kawagoe noted that several customers complained about appellant's conduct and noted that she appeared to be reluctant to work at the window, which led to complaints from her coworkers.

Appellant submitted emergency room records from June 19, 2000 which noted that she was treated for anxiety and chest pains. Dr. James Yamashita, a Board-certified internist, treated appellant for stress and anxiety due to her work situation. He advised that appellant could return to work on February 12, 2001 subject to various restrictions. In a report dated November 24, 2000, Dr. David Thompson, a Board-certified psychiatrist and neurologist, advised that appellant was treated for work-related anxiety and depression and could not work from November 24, 2000 to January 15, 2001. Dr. Joan H. Koft, a clinical psychologist, noted treating appellant for post-traumatic stress disorder and psychological factors affecting her physical condition.

In a decision dated May 21, 2001, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed emotional condition occurred in the performance of duty.

On June 19, 2001 appellant requested reconsideration and submitted additional evidence. In a December 11, 2000 statement, Bonnie Kua noted that she was a longtime friend of appellant and indicated that appellant's life and health had changed dramatically for the worse since June 2000.

In statements dated December 6 and 7, 2000, Deborah Murphy, a union steward, addressed in the meeting on October 18, 2000 with Mr. Fujioka. He requested that appellant bring a note from her physician indicating that she could work eight hours on the window. Appellant began to cry and advised that she felt intimidated and confused. Mr. Fujioka indicated that on October 14, 2000 appellant stopped working and stayed in the rest room for a period of time and appeared to be upset. Ms. Murphy indicated that Mr. Fujioka was a new clerk supervisor and did not appear to have been informed as to the severity of appellant's condition. She indicated that, although she was not an eyewitness, she learned that appellant's supervisor turned the lights off inside the mail facility while appellant was finishing her work and yelled at her to hurry up. Appellant reported to her that it was hard to see but she retrieved her items from the locker room and exited through the back door.

Kathi Oda-Nakamura, a coemployee, indicated in a January 10, 2001 letter, that Mr. Kawagoe turned off the lights while she was working in the station, although certain lights were still on in other parts of the station. Brad Blanck indicated in a letter date January 29, 2001 that appellant was hard working and conscientious. Amy S. Tokuda and Sharon Toda, both coworkers, noted that on October 14 and 30, 2000 they witnessed appellant crying at work and unable to perform her window clerk duties. On February 21, 2001 Ms. Murphy advised that appellant was incorrectly informed to prepare a CA-2 for her stress condition; however, the proper form was a CA-1, as appellant alleged to have suffered a traumatic injury from the June 17, 2000 incident.

Keith Sata, an employing establishment manager, noted that on July 3, 2000 appellant submitted a Form CA-2 and provided medical documentation. He advised that the original documents were submitted to the injury compensation office on July 5, 2000 and, in September 2000, Mr. Sata was informed that appellant's paperwork was missing. He advised that any delay in filing appellant's claim was not the fault of appellant.

Appellant submitted additional medical records from Dr. Wayne D. Levy, a Board-certified psychiatrist and neurologist, dated January 9, 2001. He treated appellant for post-traumatic stress disorder as a result of a work incident where lights were turned off at her workstation and she became frightened. Other records from Dr. Koft dated May 18 to July 23, 2001 advised that she was continuing to treat appellant for stress and that she could not work for her former supervisors.

In a decision dated September 20, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request for review was found to be immaterial in nature and not sufficient to warrant review of the prior decision.

In a letter dated December 28, 2001, appellant requested reconsideration and submitted a statement from Johanna Kim, who advised that appellant had a strong work ethic and that she suffered a medical condition as a result of managements traumatizing behavior. An accident report dated June 19, 2000 noted that appellant was taken by ambulance from the employing establishment and experienced work-related anxiety. In reports dated September 25 to December 20, 2001, Dr. Koft addressed her continuing treatment for stress.

In a decision dated April 8, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request for review was found to be immaterial in nature and not sufficient to warrant review of the prior decision.

Appellant appealed the case to the Board, and in an Order dated January 17, 2003 the Board set aside the Office decisions dated September 20, 2001 and April 8, 2002.[1] The Board indicated that appellant submitted several witness statements not considered by the Office which were relevant and pertinent to the issue in the case, and therefore, remanded the case to the Office for review of the case record and a *de novo* decision.

In a merit decision dated September 30, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed emotional condition arose while in the performance of duty.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.[2]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a

[1] Docket No. 02-1805 (issued January 17, 2003).

[2] *See Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

particular environment or hold a particular position.[3] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[4]

ANALYSIS

Appellant alleged that, on June 17, 2000, Mr. Kawagoe turned out the lights as her shift was ending and yelled at her to "hurry up, let's go." To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[5] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[6] Mr. Kawagoe advised that on June 17, 2000 at 6:15 p.m., he started to close down the station and asked appellant if she was ready to go home. She replied that she had to retrieve items from the locker room. Mr. Kawagoe proceeded to turn out the day lights, leaving on the evening lights which, he indicated produce the same amount of light as if the station were on emergency power. He did not turn off the locker room lights and appellant appeared a few moments later without indication that she was upset or disturbed. The Board finds that the evidence of record does not establish that Mr. Kawagoe harassed appellant by turning out the day lights at work.[7]

Although appellant alleged that her supervisors made statements and engaged in actions which she believed constituted harassment, the witness statements submitted to the record are not sufficient to establish that she was harassed by her supervisors. Although appellant submitted statements from coworkers, including Ms. Akamine-Adams, Ms. Kua, Ms. Murphy, Ms. Oda-Nakamura, Ms. Tokuda, Ms. Toda, Ms. Kim and Mr. Blanck, they merely provided general character statements on behalf of appellant. Ms. Oda-Nakamura noted that certain lights were turned off at work on June 17, 2000. This is not sufficient to establish harassment. The record reflects that appellant stated that, although the main lights were off, she was able to finish her work, check both safes and retrieve her belongings from the locker room. Appellant's allegation that her manager told her to "hurry up, let's go" and then turned out the main station lighting do not rise to the level of harassment. Appellant has not established a compensable employment factor under the Act with respect to the June 17, 2000 incident.

Appellant's other allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. As a general rule, a

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

[4] *Ruthie M. Evans*, 41 ECAB 416 (1990).

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

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

[7] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

claimant's reaction to administrative or personnel matters falls outside the scope of the Act.[8] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[9]

Appellant alleged that Mr. Fujioka wrongfully required her to submit medical documentation supporting that she could work an eight-hour shift. The Board finds that the employing establishment did not err or act abusively in this matter. In a statement dated November 24, 2000, Mr. Fujioka noted that, on two occasions, October 14 and 18, 2000, appellant was unable to complete her shift due to crying spells. Mr. Fujioka indicated that appellant's behavior was affecting his operation as other clerks had to perform her job and the postal customers were not getting serviced. On October 18, 2000 he met with appellant and a union steward to discuss her behavior and to request that she submit medical documentation regarding her ability to work as a window clerk for eight hours a day. In requiring the medical documentation, he stated that he was performing his administrative duties of managing the work force. The Board finds that the Mr. Fujioka acted reasonably in this administrative matter. Appellant has presented no insufficient evidence to support that he erred or acted abusively with regard to requesting medical documentation. The statements of Ms. Murphy, the union steward, do not establish that Mr. Fujioka was abusive to appellant in making the requests.

Regarding appellant's allegation that the employing establishment did not take any disciplinary action against Mr. Kawagoe, the Board finds that this allegation relates to administrative or personnel matters and not to her regular or specially assigned work duties and do not fall within the coverage of the Act.[10] Although disciplinary actions are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[11] Appellant has presented no evidence to support that any disciplinary action was required to be taken. The Board finds that the employing establishment acted reasonably in this administrative matter. Appellant has not established a compensable employment factor under the Act with respect to this allegation.

Regarding appellant's allegations that the employing establishment mishandled her compensation claims, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[12]

Also submitted was a grievance settlement dated March 25, 2002 entered on appellant's Equal Employment Opportunity (EEO) Commission claim for harassment and discrimination.

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[8] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[9] *Id.*

[10] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[11] *Id.*

[12] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

The Board notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[13]

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.[14]

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 27, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

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

[14] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).