

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

LOIS A. RITCHEY, Appellant

and

**U.S. POSTAL SERVICE, CROSSROADS POST
OFFICE, St. Petersburg, FL, Employer**

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**Docket No. 04-1284
Issued: October 29, 2004**

Appearances:

*Lenin V. Perez, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 23, 2004, denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

FACTUAL HISTORY

On July 9, 2002 appellant, then a 45-year-old letter carrier, filed an occupational disease claim alleging that severe depression, post-traumatic stress and acute stress were caused by her federal employment. Appellant alleged that she was exposed to a hostile work environment, discrimination with respect to her physical limitations, due to a work injury, fear for her personal

safety, due to terrorist actions, sexual harassment, fear of reprisal over a statement made against the actions of her supervisor and daily physical pain.¹ Appellant alleged that she first became aware of the injury and its relation to her work on June 12, 2002. She stopped work on June 5, 2002.

Appellant submitted statements in which she described her daily duties and identified those factors which she believed caused her emotional condition. Appellant alleged that, when Norm Wilkins, a supervisor, began working at the employing establishment in September 2000, he used threatening body language and intimidation to single out individual letter carriers including herself. She alleged discrimination, she filed a claim on September 7, 2001 for pain in her left elbow and hands due to repetitive motion and was removed from her temporary bid position. Appellant alleged that she feared for her personal safety after September 11, 2001 and was fearful of anthrax mail bombs and her requests for gloves was denied. She experienced stress and fear of reprisal when she was asked to make a statement against a supervisor concerning misplaced marriage cards. Appellant indicated that a meeting was held on April 22, 2002 regarding the hostile work environment that existed at the employing establishment. She alleged that her supervisor made sexual advances towards her on May 29, 2002 and was fearful that Mr. Wilkins would return to the employing establishment.

By letter dated July 17, 2002, the employing establishment controverted appellant's claim. A July 17, 2002 email from Thomas Pawlowski, the postmaster, indicated that he handled a grievance case concerning Mr. Wilkins. The resolution was noncitabile and stated that it was not correct that Mr. Wilkins was ordered removed from the employing establishment for two years and required to undergo counseling. Mr. Pawlowski indicated that the allegation of a hostile work environment was incorrect and advised that a team was addressing the work environment. In a July 17, 2002 statement, Luke Romano, the station manager, denied interacting with appellant with the exception of observing her demeanor while working or exchanging simple greetings. Mr. Romano indicated that he never witnessed any of the alleged behavior concerning Mr. Wilkins, but rather explained that he experienced Mr. Wilkins performing his supervisory duties, which included addressing performance deficiencies. Mr. Romano noted that appellant had numerous personal problems which included her own physical restrictions, her husband having suffered a stroke, the events of September 11, 2001 and attendance at union meetings. He denied any specific knowledge of any inappropriate advances made by another male supervisor, John H. Jones. Mr. Romano alleged that Mr. Jones denied the allegation and indicated that appellant would seek Mr. Jones' advice concerning her compensation claims.

In a June 12, 2002 report, Dr. Walter Afield, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder and indicated that appellant was unable to work.

In a letter dated July 31, 2002, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested that she submit additional supportive factual and medical evidence. The Office received additional reports from Dr. Afield, dating from

¹ Appellant alleged that she had physical limitations due to a work injury that appears to be a separate accepted claim. However, the record in this case does not contain a claim number.

June 13 to November 18, 2002. Additionally, notes from a mental health counselor were also included which contained a history of alcohol abuse.

Appellant also provided statements from coworkers. In an April 1, 2002 statement, William Walz indicated that Mr. Wilkins intimidated a coworker, Vivian Stowell. In an undated statement received by the Office on August 30, 2002 Dennis R. Ethier, a coworker, indicated that appellant was upset because she was concerned about anthrax and that management was not concerned about employee safety. In an undated statement received by the Office on August 30, 2002 Chuck Lopez, the manager of Century Mobile Homes, indicated that he was told the carrier was handicapped. In an undated statement received by the Office on August 30, 2002, Karen Wind, a coworker, indicated that she noticed Mr. Romano staring appellant down and standing behind her while she was working and looking very intimidating. Ms. Wind stated that she was often asked to case appellant's top row, since appellant could not reach it and Lisa Williamson, a supervisor, would refer to appellant in a derogatory manner, noting that appellant could not reach the top row. Appellant also provided statements from the union president and coworkers regarding the marriage cards, confirming that they were on Ms. Williamson's desk. On August 30, 2002 the Office received several statements from appellant and her coworkers, which described the behavior of Mr. Wilkins, including such actions as glaring at them with his teeth clenched, and advising carriers that he was "going to take care" of them.

In a statement dated April 22, 2002, the union president, O.D. Elliott, indicated that there were 526 carriers in St. Petersburg and that 13 percent of them were located at the Crossroads plant. He noted that 26 percent of the disciplines were issued at the Crossroads plant in 2001. Mr. Elliott indicated that he received a call from appellant, who indicated that Mr. Jones, a supervisor, made comments and/or gestures which she felt were inappropriate and sexual in nature. He noted that the remarks concerned appellant having lunch with Mr. Jones and being told that she "did something" for him and that he patted his heart and said "[b]e still my heart."

On August 30, 2002 the Office received a statement from appellant in which she alleged that she was removed from her temporary bid assignment while she was on light duty and was harassed by Nancy Spence, regarding taking too long to deliver mail. Appellant alleged that she was removed from her temporary bid on September 7, 2001 after she filed an occupational disease claim. Appellant alleged that she was sexually harassed by Mr. Jones on May 29, 2002 while she was discussing a doctor's note with him. He stated that she was too pretty and that she overwhelmed him. She indicated that she filed two Equal Employment Opportunity (EEO) complaints. Additionally, appellant indicated that her husband suffered a stroke and began seeing a doctor for stress and depression.

Appellant provided a copy of an EEO complaint dated July 8, 2002 in which she alleged that on April 15, 2002 the shop steward approached her "to relay a comment to me that originated from Mr. Wilkins. [He] stated that he could not wait until his two years was up as so he has some scores to settle." Appellant indicated that Mr. Wilkins was removed from his position at the Crossroads plant as the result of an investigation. She provided a copy of a July 26, 2002 EEO complaint in which she alleged that Mr. Jones' comment that she was too pretty made her feel uncomfortable. Appellant also submitted a grievance form concerning an

incident on September 7, 2001 in which she was instructed to rescind her bid on route 970 with the remedy that she was placed back in her position.

By letter dated March 5, 2003, the Office requested that the employing establishment provided additional factual evidence. In a response dated March 28, 2003, Mr. Romano indicated that there were numerous misrepresentations made by appellant. He noted that, when Mr. Wilkins was assigned as the supervisor of zone 9 in the Crossroads station, he went about attempting to bring the zone into conformance with established operational guidelines, as there was little adherence to the rules and regulation. Mr. Romano noted that, after advising the employees of the rules and regulations in conjunction with weeks of service talks and training, management began to hold employees accountable for their performance. Those carriers who refused to follow proper work practices, despite the extensive service talks and training, were subject to corrective action. Mr. Romano indicated that those carriers that refused to work according to established work methods were not happy with receiving corrective actions. He noted that Mr. Wilkins did not discriminate with holding employees accountable for their performance, as many male carriers also received formal corrective actions. Mr. Romano denied appellant's allegations regarding Mr. Wilkins being removed from the Crossroads station and being ordered to undergo counseling. He attached a letter from the postmaster of St. Petersburg, explaining his decision and subsequent action with regard to the reassignment of supervisor Wilkins. Mr. Romano noted that, with regard to his intimidating body language, he explained that he was 5' 10" and weighed approximately 270 pounds. He usually stood on the work floor with both of his hands in his pockets and would routinely spend the bulk of the morning going between all three delivery zones in the facility. Mr. Romano addressed appellant's allegation of "critical note taking" and indicated that many of those who were not performing their duties as required, resented the fact that any type of record was being made of the time and date they were observed not performing their duties properly. Mr. Romano explained that appellant was not permitted to do as she pleased and was provided work within her medical restrictions. She was removed from her temporary bid on route 970 because she was not capable of performing all of the required duties. He addressed appellant's allegation regarding a statement she made against a supervisor for allegedly "throwing out" marriage mail cards, stating that an investigation disclosed that one of appellant's peers had not delivered these cards as required. Mr. Romano also addressed appellant's concerns regarding the events following September 11, 2001 and the anthrax incidents, noting that all of the employees were placed under the same stresses of the events of that time and every facility was provided with a sufficient supply of gloves and face masks for any employee and denied that Ms. Spence acted inappropriately. Mr. Romano also noted that Mr. Jones denied appellant's allegations of acting in an unprofessional and inappropriate manner. He was not at the union meeting on April 22, 2002 but findings were made that the main problems in the Crossroads station were a direct result of employees being unhappy with being held accountable for their performance and the fact that six routes were abolished as a result of recent route inspections. Mr. Romano explained that many of the carriers were not happy with their routes being expanded to bring them back up to eight hours of work per day. He noted that Mr. Wilkins did not return to the employing establishment because he accepted a position in the Palmetto Post Office.

In an April 10, 2002 letter, Mr. Pawlowski indicated that he agreed to move Mr. Wilkins to another station as it was in the best interest of the employing establishment based on his

expertise and not based on any allegations. Mr. Wilkins was on a performance improvement plan at his new station regarding his interaction with employees under his direction and that his training was for dealing with difficult people and effectively handling confrontation and not due to having a problem dealing with female employees.

By decision dated April 15, 2003, the Office denied the claim, finding that the claimant had not submitted sufficient evidence to support that the claimed condition was sustained in the performance of duty.

By letter May 12, 2003, appellant requested a hearing which was held on December 29, 2003. On January 26, 2004 appellant's representative submitted additional witness statements repeating earlier allegations.

By letter dated February 2, 2004, the employing establishment responded to the transcript of hearing. In a January 29, 2004 statement, Mr. Jones addressed the allegations against him and indicated the conversations with appellant were only casual in nature. He denied asking appellant to lunch, making gestures behind her back or making any suggestive comments. Mr. Jones responded to allegations concerning appellant calling him for questions and indicated that he helped appellant and her husband. Mr. Jones denied that he had made statements to appellant regarding her beauty and denied that his voice was on the tape appellant played. He also indicated that appellant had received hazard training on September 6, 2001 days before the September 11, 2001 incident and was aware of how to handle items in the mail. He denied that a request for gloves was dismissed. Mr. Jones indicated that the employing establishment reached a decision on November 25, 2003 that appellant failed to prove her case of sexual harassment.

By decision dated March 23, 2004, the Office hearing representative affirmed the April 15, 2003 decision.

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.² 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.³

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

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

adversely affected by employment factors.⁴ 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.⁵

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.⁶ 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.⁷

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ 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.⁹

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Regarding appellant's allegation that she was discriminated against with regard to her physical restrictions and taken off her route, denied gloves for fear of anthrax and was monitored by a supervisor, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁰ Although the assignment of work duties and administration of

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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).

supplies and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹¹ 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.¹² However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters.

Appellant alleged that she was discriminated against when she was taken off her temporary bid. However, Mr. Romano explained that she was removed because she could not perform all of the duties of the position. Regarding appellant's request for gloves, Mr. Jones indicated that appellant was given hazard training and denied that her request for gloves was dismissed. Appellant testified during the hearing that another carrier gave her gloves. Mr. Romano explained that, when Mr. Wilkins arrived, he was addressing performance deficiencies at the station and denied that appellant was monitored unreasonably. Appellant has not established a compensable employment factor under the Act with respect to administrative matters as the evidence does not establish error or abuse as to the lunch rotations or leave denials.

Appellant alleged that she was subjected to sexual harassment and intimidation by her supervisors. She alleged that Mr. Wilkins, used threatening body language to single out individual letter carriers. Appellant provided a statement from Ms. Wind, who alleged that Mr. Romano stared at appellant. However, Mr. Romano denied the allegation and explained that he was 270 pounds and under 6 feet and his body language was usually comprised of standing with both hands in his pockets as this was more comfortable. Appellant alleged that she was harassed by Mr. Jones, when he told her she was too pretty, when he asked her to lunch and when he told her to "be still my heart." She also provided several statements from coworkers. Mr. Walz only indicated that Mr. Wilkins intimidated a coworker named Stowall. However, this statement was not specific to appellant. She also provided a statement from the union president regarding Mr. Jones and references to appellant's beauty. However, these statements fail to substantiate appellant's allegations of sexual harassment. Mr. Jones denied appellant's allegations and indicated that their conversations were only casual in nature. He also questioned the validity of appellant's witness statements, noting that Mr. Richey and Dennis F. Sanders were close friends of appellant and her husband and questioned the authenticity of their statements as they were more than 75 feet away. He denied making remarks regarding appellant's beauty or that appellant was not given safety equipment such as gloves. He advised that a sexual harassment claim filed by appellant was not proven. Appellant also alleged that Mr. Wilkins harassed her and she filed a grievance; however, the postmaster, Mr. Pawlowski denied that Mr. Wilkins was ordered removed from the station or that he was required to undergo counseling and denied appellant's allegation of a hostile work environment. Mr. Romano

¹¹ *Id.*

¹² See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

indicated that he never witnessed any improper behavior by Mr. Wilkins, other than supervisory behavior, which included addressing performance deficiencies.

Appellant alleged that she was discriminated against with regard to her work-related injury when she was referred to as being handicapped. The employing establishment indicated that appellant was taken off her temporary bid because she could not perform the physical requirements; however, there is no evidence to substantiate that appellant was discriminated against because of her physical status. The employing establishment confirmed that appellant may have been referred to as handicapped to the extent that she would not be able to deliver the route if the road was blocked, it does not appear from the totality of the record evidence to have been a threat or form of harassment.¹³ In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors.¹⁴ The Board finds that appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant made a general allegation that her stress was a result of a hostile work environment. However, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁵ The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.¹⁶ While verbal altercations and difficult relationship with supervisors, when sufficiently detailed by the claimant and supported by the record may constitute factors of employment,¹⁷ 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.¹⁸ An employee's complaints concerning the manner in which a supervisor performs his duties or exercises his supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act.¹⁹ This principle recognizes that supervisors or managers in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a

¹³ 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).

¹⁴ *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).

¹⁵ *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁶ *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

¹⁷ *Christopher Jolicoeur*, 49 ECAB 553, 556 (1998).

¹⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁹ *Id.*

supervisory or management action will not be actionable, absent evidence of error or abuse.²⁰ In the instant case, the employing establishment denied the allegations of a hostile work environment and appellant did not provide specific evidence to support her allegation.

Regarding appellant's allegation of fear of reprisal based upon providing a statement relating to the marriage cards, this fear of reprisal can only be considered self-generated.²¹ The record reflects that appellant provided a statement and the employing establishment explained that another carrier was found to be responsible. No further action was taken regarding the matter, and this would not be a compensable factor.

Regarding appellant's allegation that she feared for her personal safety and was denied gloves for her fear of anthrax. As noted above, the employing establishment noted that appellant was not denied gloves and she supported a statement that she was given gloves. Regarding her fear of anthrax, the Board notes that there was no evidence that anthrax was found at the employing establishment.²² The record is void of any evidence that appellant ingested, inhaled or in any manner came into direct physical contact with any substance such as anthrax while in the performance of duty. This case can, therefore, be distinguished from those in which the claimant is exposed to an unknown and potentially dangerous substance.²³ The Board thus finds that appellant's reaction was self-generated and was based on her mere perception of events and perceptions and feelings alone are not compensable factors.

For the foregoing reasons, the Board therefore finds that appellant has failed to establish a compensable factor of employment. Since no compensable factors have been established, it is not necessary to address the medical evidence.²⁴

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal employment.

²⁰ *Alfred Arts*, 45 ECAB 530 (1994).

²¹ *See Gracie A. Richardson*, 42 ECAB 850 (1991) (the Board found that the employee's fear of gossip was a personal frustration clearly not related to her job duties or requirements and thus not compensable).

²² Where the disability does not result from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability would not come within the coverage of the Act. *See Lillian Cutler*, 28 ECAB 125 (1976).

²³ *See Judy C. Rogers*, 54 ECAB ____ (Docket No. 03-565, issued July 9, 2003).

²⁴ *See Diane C. Bernard*, 45 ECAB 223, 227-28 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 23, 2004 is affirmed.²⁵

Issued: October 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

²⁵ The Board notes that appellant's appeal to the Board was accompanied by new evidence. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.