United States Department of Labor
Employees' Compensation Appeals Board

DETRA A. WILLIAMS, Appellant	)	
and	)	**Docket No. 04-1770**
	)	**Issued: October 8, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Baton Rouge, LA, Employer	)	

Appearances:
MacAllynn J. Acheé, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal from the May 27, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her emotional condition claim. The Board has jurisdiction to review this decision.[1]

ISSUE

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

FACTUAL HISTORY

On August 20, 2003 appellant, then a 50-year-old distribution/window clerk, filed a claim alleging that her anxiety attacks, high blood pressure and migraine headaches were a result of her federal employment: "I was falsely accused of threatening fellow employee [Thelma McCoy] with a pair of scissors on July 25, 2003 and interrogated by a threat assessment team, found

[1] 20 C.F.R. §§ 501.2(c), 501.3.

threat to be untrue, required to work in same environment as accuser, given AWOL [absent without leave] by management for becoming ill and unable to work on July 26, 2003."[2] She submitted an August 21, 2003 narrative describing these incidents in greater detail.

In an August 19, 2003 report, Dr. Steven J. Zuckerman, Board-certified in internal medicine and neurology, addressed the accusation made against appellant and appellant's perception of a threat:

> "[Appellant] is currently undergoing a very emotionally challenging time from work. Apparently, she had a disagreement with a coworker. That coworker subsequently had accused [her] of verbal and physical threats. She has been exonerated from this charge. However, she still perceives a very real threat at the workplace if she has to be in the same work environment with this other individual. Her headaches have increased sharply since this situation developed. Her medications include Zyprexa, Zanaflex, Risperdal and Zoloft.
>
> "Her exam[ination] does not show any focal neurological deficits.
>
> "At this time, I suspect that [appellant] is having tension[-]type headaches related to the stress of her work environment. She should certainly be allowed to take time off necessary to help resolve the situation and allow her anxiety level to return to baseline. Therefore, at this time she is temporarily disabled."[3]
>
> On August 28, 2003 Dr. Zuckerman expanded the scope of his opinion:
>
> "It is my opinion that the additional anxiety and stress caused by this work incident and its subsequent handling by the Postal Department, had exacerbated her underlying headache condition as well as induced hypertension which is clearly stress related. She has been placed on appropriate medication and will need follow[-]up care in an effort to monitor its effectiveness. She is clearly in no condition to work at this time and will be unable to return to work until the work environment is secure and nonthreatening."

The employing establishment did not concur with appellant's allegations of being harassed by management. The station manager explained that appellant was charged under specific sections of the Employee and Labor Relations Manual for being AWOL, on July 26, 2003, because she did not speak with a supervisor about taking leave that day. The charge was later changed to leave without pay. The station manager also addressed the result of the investigation into incident with Ms. McCoy: "The threat assessment [team] found that there was not enough evidence to support Ms. McCoy's claim of being threatened by [appellant]." With no evidence to support the allegations of a threat, the employing establishment found no reason to remove either employee from the workplace.

[2] The Office handled appellant's claim as one of occupational disease or illness after she filed a second claim form indicating that her condition was produced over a period longer than a single workday or shift. *See* 20 C.F.R. § 10.5(q) (1999) (occupational disease or illness defined).

[3] A treatment note from June 19, 1997 indicated that appellant had a history of migraines for 26 years.

In a decision dated May 27, 2004, the Office denied appellant's claim for compensation. The Office found that none of the incidents appellant alleged were compensable.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[4] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[5] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[6]

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. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[7]

Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[8] The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual

[4] 5 U.S.C. § 8102(a).

[5] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[6] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

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

[8] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

basis for an emotional condition claim.[9] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[10] The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[11]

ANALYSIS

Appellant attributed her anxiety attacks, high blood pressure and migraine headaches to an allegation made by a coworker on July 25, 2003. Appellant contends that the allegation was false, that she did not threaten Ms. McCoy with a pair of scissors. To support her view she points to the finding of the threat assessment team that investigated the matter. As Dr. Zuckerman put it, appellant believed that the threat assessment team "exonerated" her. But the evidence does not go that far. According to the station manager, the threat assessment team found that there was not enough evidence to support Ms. McCoy's complaint. This does not establish that Ms. McCoy was lying, only that the threat assessment team could not find sufficient evidence to prove her allegation. The Board finds itself in the same position, unable to determine from the evidence presented whether Ms. McCoy made a false charge, as alleged. This does not mean that appellant is lying. Whether appellant threatened to stab Ms. McCoy with a pair of scissors on July 25, 2003 or whether Ms. McCoy victimized appellant by malicious allegations that have no proof will not establish facts. This is the reason appellant's claim for compensation fails: she has submitted no evidence to prove her allegations. Mere perception of a threat from Ms. McCoy is not enough to support an award of compensation.

If it were established that the employing establishment erroneously charged appellant as AWOL or erroneously refused to remove Ms. McCoy from the workplace, then there could be a factual basis for finding a compensable factor. But there is no evidence to support appellant's allegations of error in an administrative or personnel matter, no proof of mismanagement, harassment or ridicule. The employing establishment denied appellant's allegations and explained the actions it took in her case. With no evidence to tilt the scales convincingly in appellant's favor, the Board will affirm the denial of her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

---

[9] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[10] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[11] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member