

FACTUAL HISTORY

On October 22, 2003 appellant, then a 45-year-old mail handler, filed a claim alleging that on September 25, 2003 she sustained a severe anxiety attack.¹ She alleged that the employing establishment abused its authority when it notified her on September 25, 2003 that she was being moved to another facility² and her work hours were to be changed from 2:00 p.m. to 10:30 p.m., to 6:00 p.m. to 2:30 a.m.³ Appellant alleged that her supervisor did not comply with a 2000 federal court settlement agreement and Equal Employment Opportunity (EEO) Commission settlement agreement.⁴ She also alleged that the employing establishment abused its authority in denying her request for leave under the Family Medical Leave Act (FMLA). Appellant further alleged that a woman named Theresa yelled at her because she was not in her assigned work area.⁵

In a disability certificate dated September 25, 2003, Dr. Anthony Will stated that appellant was disabled due to an unspecified medical condition. In a December 17, 2003 report, Maria Hannel, Ph.D., a clinical psychologist, stated that appellant had an adjustment disorder with anxiety and depressed mood due to changes in her work hours and environment.

In a February 7, 2000 federal district court settlement, appellant agreed to dismiss a lawsuit against the employing establishment.⁶ The settlement indicated that she would begin working at the NVDDC on February 26, 2000 from 2:00 p.m. to 10:30 p.m. The settlement agreement provided that it did not constitute an admission of liability or fault by the employing establishment.

In statements dated December 31, 2003 and January 9, 2004, Suzanne Hastings, an employing establishment injury compensation specialist, stated that the federal court settlement agreement provided for a change in appellant's work facility as of February 26, 2000 and did not state that her work hours could not be changed. She indicated that, due to operational changes, appellant was moved to a new facility that did not commence operations until late afternoon

¹ Appellant previously claimed injury on April 4, 1995 that was accepted for depression and post-traumatic stress disorder. The claim involved sexual harassment by two male employees. Appellant's claim for a recurrence of disability under this claim was denied.

² Appellant was transferred from the North Valley Delivery Distribution Center (NVDDC) to the Priority Mail Package Processing Center (PMPPC). Due to operational changes, the NVDDC facility was closed.

³ Appellant filed a grievance against the employing establishment on October 8, 2003 alleging that it violated a 2000 EEO settlement agreement when it moved her to another facility and changed her work schedule. There is no final decision of record regarding her grievance.

⁴ There is no EEO settlement agreement of record.

⁵ Appellant stated at the hearing held in this case that she had no evidence to substantiate her allegation of being yelled at in the workplace.

⁶ The settlement agreement did not specify the specific subject matter of the lawsuit. However, the employing establishment has indicated that the purpose of the agreement was to move appellant to a different facility because she had been harassed by two employees at her former workplace.

which was the reason for her schedule change.⁷ Ms. Hastings stated that appellant was advised of her start time on September 25, 2003 but she did not report to work the following day and later filed a compensation claim. She indicated that the purpose of the federal court settlement agreement was to move appellant to a facility where two employees who had previously harassed her were not assigned. Ms. Hastings stated that, when appellant requested family leave, the FMLA coordinator sent her a package of documentation to complete, but she never submitted the proper medical documentation.

By decision dated January 20, 2004, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable factor of employment.

On January 24, 2004 appellant requested a hearing that was held on July 27, 2004.

At the hearing appellant submitted a June 30, 2004 report from Dr. Eugene R. Almer, a Board-certified psychiatrist, who indicated that she became upset when her workplace and hours were changed. He diagnosed major depression and generalized anxiety disorder.

By decision dated October 13, 2004, an Office hearing representative denied appellant's emotional condition claim on the grounds that she failed to establish a compensable factor of employment.

LEGAL PRECEDENT

The Federal Employees' Compensation Act⁸ provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹⁰ the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹¹ When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her

⁷ Ms. Hastings indicated that other employees were also affected by the change.

⁸ 5 U.S.C. § 8101-8193.

⁹ *George C. Clark*, 56 ECAB ___ (Docket No. 04-1572, issued November 30, 2004).

¹⁰ 28 ECAB 125 (1976).

¹¹ *George C. Clark*, *supra* note 9.

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 results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.¹²

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.¹³ 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.¹⁴

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 Act. 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.¹⁵ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.¹⁶ However, 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.¹⁷

ANALYSIS

Appellant alleged that the employing establishment abused its authority when she was reassigned to another postal facility, her work schedule was changed and her request for family leave was denied. These allegations involve administrative or personnel actions that are not compensable under the Act absent evidence of error or abuse.¹⁸ The employing establishment

¹² *Lillian Cutler*, *supra* note 10.

¹³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ *Id.*

¹⁵ *Lillian Cutler*, *supra* note 10.

¹⁶ *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

¹⁷ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

¹⁸ *Michael A. Salvato*, 53 ECAB 666 (2002) (the assignment of a work schedule and decisions regarding leave usage are administrative actions that are not compensable absent error or abuse); *James D. Carter, Jr.*, 43 ECAB 113 (1991) (an emotional reaction to an involuntary transfer amounts to a frustration at not being allowed to work in a particular environment and is not compensable under the Act).

denied appellant's allegations and she has not submitted sufficient evidence of error or abuse by the employing establishment in its handling of these administrative matters. The employing establishment indicated that, due to operational changes and the closing of the facility at which she worked, appellant was moved to a different facility. This facility did not commence operations until late afternoon which caused a change in her work schedule. Regarding appellant's allegation that she was improperly denied family leave, the employing establishment noted that the FMLA coordinator sent her the required documentation to complete but she never submitted the proper medical documentation. The Board finds that appellant has failed to establish error or abuse in the employing establishment's handling of these administrative matters. Therefore, these allegations do not constitute compensable factors of employment.

Appellant has also alleged that a woman yelled at her on the workroom floor. 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.¹⁹ However, for harassment and 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.²⁰ In this case, appellant provided no supporting evidence regarding her allegation that someone yelled at her on the workroom floor. Therefore, this allegation is not found to be a compensable factor of employment.

As appellant has failed to establish that her emotional condition was causally related to any compensable factor of employment, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition was causally related to any compensable factor of employment.²¹

¹⁹ *Charles D. Edwards, supra* note 17.

²⁰ *Donna J. DiBernardo, 47 ECAB 700 (1996).*

²¹ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Garry M. Carlo, 47 ECAB 299 (1996).*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 13 and January 20, 2004 are affirmed.

Issued: April 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member