United States Department of Labor
Employees' Compensation Appeals Board

SANDRA R. BAKER, Appellant	)	
and	)	**Docket No. 05-767**
	)	**Issued: August 12, 2005**
U.S. POSTAL SERVICE, HANCOCK STATION, Los Angeles, CA, Employer	)	

Appearances:
Sandra R. Baker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 15, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated February 12, 2004 and January 26, 2005 finding that she had not established an emotional condition causally related to her federal employment. 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 has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

FACTUAL HISTORY

On August 15, 2003 appellant, then a 38-year-old modified letter carrier, filed an occupational disease claim alleging that she developed work-related stress and depression due to factors of her employment. Appellant stated that she was sent back from an eight-hour job in Ontario, California to work at the Hancock Station for only two hours a day. Appellant further

stated that she had been refused work and harassed regarding her uniform. In a statement dated November 14, 2002, appellant alleged that she was not allowed to work a full shift at the Hancock Station because she did not have a full uniform. Appellant noted that she had not received a uniform allowance during the two years that she worked in Ontario, California. She noted that she currently had a complete uniform, but was allowed to work only two hours a day.

In a report dated July 23, 2003, Dr. Michael Accord, a physician, diagnosed a chronic sprain/strain of the right side of the neck resulting from her accepted 1990 work injury. He submitted a work restriction evaluation dated July 12, 2003 which indicated that appellant could not lift over five pounds and could only push or pull up to two pounds and that she should perform no work above the shoulder.

The Office requested additional information by letter dated September 3, 2003. Appellant submitted her Equal Employment Opportunity claim in which she alleged that she experienced discrimination based on her injuries. She noted that she was refused work because she did not have a uniform on March 12, 2002 and because the employing establishment believed that she no longer had an accepted claim. Appellant stated that the employing establishment frequently sent her home after two hours or less of work beginning November 12, 2002. She was not paid for the November 11, 2002 holiday, on November 27, 2002 appellant had to use leave to make up a 2-hour workday, on December 7, 2002 she was only allowed to work 1 hour and on December 12, 2002 was only allowed to work 28 minutes. Appellant also received a letter on April 24, 2003 advising her of a meeting regarding her leave status since March 25, 2003. She noted that in 1990 the Office accepted her claim for right shoulder injury while her second claim for injury in July 2001 was denied.

John Searles, supervisor of customer service, responded on August 17, 2003 and noted that appellant was returned from Ontario due to downsizing. He stated that appellant reported to work out of uniform and therefore could not perform the duties of a carrier. Mr. Searles provided a copy of a decision dated March 11, 2002 from the Office denying appellant's claim. On March 13, 2002 the employing establishment human resource specialist directed appellant's supervisors to return her to full duties if no medical restrictions existed, and stated that, if medical restrictions were documented, then appellant should request light duty.

Clifton L. Taylor, manager of customer service, completed a statement on October 11, 2002 and noted that he informed appellant that she must return to full duty unless she had further documentation from her doctor.

In a form report dated March 13, 2002, Dr. John R. Hollingsworth, an employing establishment physician, provided appellant's work restrictions of no lifting over 10 pounds and no work above the shoulder. On November 12, 2002 Mr. Taylor noted that appellant had permanent and stationary restrictions which the employing establishment could not accommodate.

Appellant submitted a statement dated September 26, 2003 in which she stated that she felt abused by the management of the Hancock Station. Appellant alleged that she was instructed to report to work, that she would arrive at work and then be provided her with two hours or less of work. She also noted that she was not allowed to work as she did not report to

work in full uniform, but that when she obtained a full uniform she was not allowed to work as no work was available for her. Appellant stated that she developed stress as she was not allowed to work.

By decision dated February 12, 2004, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment.

Appellant requested an oral hearing on February 17, 2004 and testified at her oral hearing on October 19, 2004. She noted that she sustained a work-related injury in May 1990 which the Office accepted for right cervical strain. Appellant then described her limited-duty job in Ontario, California as labeling and inspecting empty mail equipment. She alleged that she sustained an additional job injury in July 2001 when she was struck by an empty hamper. Appellant continued to work and was instructed to report to work in Los Angeles, California. She stated that there was no work available for her and that she was allowed to work only two hours a day from March through December 2003. Appellant also alleged that she was required to work outside her medical restriction of no reaching above the shoulder. She stated that Mr. Taylor and Mr. Searles assigned mail for her to case. Appellant alleged that she would begin to case the mail that was within her work restrictions, *i.e.*, below shoulder level, and that, before she could complete even this portion of her assignment, Mr. Taylor or Mr. Searles would instruct her to leave. She noted that she attempted to work outside her restrictions on occasion. Appellant also attributed her condition to the requirement that she obtain a full uniform when she had not received a uniform allowance for two years and when she could no longer wear her old uniform due to weight loss. She stated that she was currently receiving disability retirement benefits.

By decision dated January 26, 2005, the hearing representative denied appellant's claim finding that the assignment of work and requirement of uniforms was an administrative function, and that she had not substantiated that she was required to work outside her restrictions and that therefore she had not substantiated a compensable factor of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 of specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] 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.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

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 the coverage of the Act.[3] While an administrative or personnel matter will be considered an employment factor where the evidence discloses error abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.[4]

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[5]

The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[6]

ANALYSIS

Appellant has attributed her stress and emotional condition to the failure of the employing establishment to provide her with eight hours of work within her work restrictions. The Board has held that the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the Act.[7] As appellant has submitted no evidence of error or abuse, she has not established that the unavailability of work was a compensable factor.

Appellant also attributed her emotional condition to the requirement that she report to work in full uniform. The Board has held that enforcement of a dress code is an administrative matter.[8] Appellant has not submitted any evidence that the employing establishment erred or acted inappropriately in requiring her to report to work in uniform. Therefore she has not established that this requirement was a compensable factor of employment.

In support of her claim for an emotional condition, appellant alleged that she was required to work outside her restrictions, specifically that she was required to reach above the shoulder with her right arm. The Board has found that assignment of duties beyond an employee's work tolerance limitations may be a compensable factor of employment.[9] However, appellant has not submitted any supporting evidence corroborating that she was required to work

[3] *James E. Norris*, 52 ECAB 93, 100 (2000).

[4] *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

[5] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

[6] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[7] *Barbara J. Latham*, 53 ECAB 316, 318-19 (2002).

[8] *Claudia L. Yantis*, 48 ECAB 495, 496-97 (1997).

[9] *Kim Nguyen*, 53 ECAB 127, 128 (2001).

beyond her physical restrictions. As there is no evidence supporting appellant's claim, she has failed to substantiate a compensable employment factor in this regard.

Appellant also alleged that the above described actions by the employing establishment were harassment. As noted previously, the mere perception of harassment or discrimination is not compensable.[10] Appellant has not submitted any evidence that the employing establishment's actions were improper or were made in an effort to harass her. For these reasons she has not established harassment as a compensable factor of employment.

CONCLUSION

The Board finds that appellant has not substantiated a compensable factor of employment and that therefore she has failed to establish that she developed an emotional condition due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2005 and February 12, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 12, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

[10] *Id. at* 129.