United States Department of Labor
Employees' Compensation Appeals Board

LAURA C. SEDORYK, Appellant	)	
and	)	**Docket No. 05-852**
	)	**Issued: August 8, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Howell, MI, Employer	)	

Appearances:
Laura C. Sedoryk, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 3, 2005 appellant filed a timely appeal from the November 5, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim that she sustained an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's decision.

ISSUE

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

FACTUAL HISTORY

On the prior appeal of this case,[1] the Board noted that appellant seeks compensation for an emotional condition that she attributes to management's lack of action to address certain behaviors, to a lack of discipline or a hostile work environment and to continual petty harassment

[1] Docket No. 03-787 (issued August 28, 2003).

by management, the union and employees. She stated that she was harassed by three employees, a union steward, her supervisor and two clerks. The Board found that the evidence submitted was insufficient to establish a specific instance of harassment. The postmaster's August 27, 2002 statement, however, supported that there was an avalanche of negative feelings toward appellant and a negative change in her working conditions. The Board found that this, together with a coworker's general description of a hostile work situation, was sufficiently supportive of appellant's claim to warrant further development by the Office. The Board set aside the Office's January 3, 2003 merit decision denying appellant's claim and remanded the case for a more specific statement from the postmaster, the supervisor and any other readily identifiable individual on the issue of harassment or hostility or negative feelings toward appellant on or after November 6, 2000. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On remand, the Office requested statements from the postmaster and four witnesses, whose names and addresses appellant provided. Two witnesses responded. Elaine Freel stated that she worked next to appellant from 2000 to 2003 and witnessed some of the harassment and hostility. She recalled disputes over perfume and postal uniforms, accusations of mental illness and a joke: "How do you get a day off work? Pull a Laura and go off on stress relief." Candi Pamplin stated that when appellant filed her claim for compensation rural carriers watched for her mail and loudly commented, "We could steam it open." She noted meeting with Linda Woods, Jim Masters and appellant on the problems of harassment and hostility by the rural carriers, during which she was told there was a witch hunt going on: "trying to run her out of here, why does she have to work, she doesn't need to work, etc." Ms. Pamplin noted heckling, whistling, loud and smart comments made by a particular clerk and by rural carriers. She noted intentional behavior, an obsession with appellant and her personal life and not wanting her to return to work. She spoke of intimidating behavior, including anger at appellant for trying to resolve a safety issue and for submitting an awareness form suggestion. She spoke of the hostile work environment, harassment, bullying, abuse, foul language, name calling and intimidating behavior, which she stated created an intimidating, hostile and offensive work environment for appellant. She noted that there were many incidents of demeaning and abusive behavior.

In a decision dated January 15, 2004, the Office denied appellant's claim for compensation. The Office stated that Ms. Pamplin's statement was the only response it received and that it provided no evidence that was specific or detailed enough to establish harassment on the job.

Appellant requested an oral hearing before an Office hearing representative. She submitted a statement from Barbara Ott, whose workstation was located across from appellant's for approximately three years. Ms. Ott noted that appellant was the subject of vicious gossip and false accusations. A favorite fuel for gossip, she stated, was appellant's attire, though "I have never considered her apparel improper or any more daring than other carriers have worn, myself included." She echoed the conflicts over perfume and a pair of uniform shorts. She heard one coworker tell management that she would take matters into her own hands if management did nothing concerning appellant.

At the hearing, which was held on June 29, 2004, appellant appeared and testified. She stated that working at the employing establishment was like being in high school with no

teachers or principal: the environment became so unruly and intolerable that she could no longer come to work to do a fair day's work. She stated that she experienced physical confrontations, verbal abuse, intimidation, persecution, heckling, harassment and hazing, all of which were preventable had the behaviors been effectively managed and not allowed to thrive unchecked. She submitted bills and repair orders for a series of flat tires and scratches and dents to the side of her car in the employing establishment parking lot.

In a decision dated November 5, 2004, the hearing representative affirmed the denial of appellant's claim, finding that she submitted insufficient evidence to establish harassment in the workplace: "While the evidence, specifically the witness statements, is supportive of the claim, no specific instance of harassment on the part of the co-workers or management or agency abuse has been demonstrated." The hearing representative noted that, in the absence of a compensable work factor, medical evidence regarding the issue of causal relationship need not be addressed.

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.[2] 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."[3] "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.[4]

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

[2] 5 U.S.C. § 8102(a).

[3] 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).

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

or frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

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.[6] 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 basis for an emotional condition claim.[7] 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.[8] The primary reason for requiring factual evidence from the claimant in support of his or 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.[9]

ANALYSIS

Appellant's claim does not rest on mere perceptions or on unsupported allegations. Although she has submitted evidence that generally supports her claim, the record contains no proof of error or abuse by management in any administrative or personnel matter. According to appellant, Mr. Crain, a coworker, complained to management that she was coming to work 15 minutes early. Appellant was instructed to stop the practice. When she saw that Mr. Crain was himself coming to work 15 minutes early, she went to the postmaster and asked him to talk with Mr. Crain, not only about his early arrivals, but about his showing her pictures and telling her how cute she would look in certain outfits and about his shooting rubber bands at her rear end and about keeping his comments to himself. The postmaster explained in his August 27, 2002 statement:

> "The incident with Mr. Crain is what I believe to be the most critical to this claim. [Appellant] mentions his complaining to me about her early start time. Her reaction was to complain to me about his harassment of her. I necessarily spoke to Mr. Crain about this and the avalanche of negative feelings toward the claimant started. It has not subsided to date but through closer workplace supervision

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

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

[7] *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).

[8] *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).

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

> [appellant] has been further insulated from these since she last returned to work. The hostile work environment in the claim arose from this incident and precipitated much of the reaction by [appellant]. Her co-workers aligned themselves with Crain and shunned her. Her world as she knew it was turned upside down and her incapacity to work followed. The Crain allegation from my standpoint is the pivotal event in this case. Things went constantly downhill for her after this event."

The postmaster's statement, while sympathetic to appellant's contentions, does not establish any specific incident of harassment or hostility. It is not enough for the evidence to support a general atmosphere of negative feelings. To establish that an incident occurred as alleged, the evidence must be sufficiently specific as to person, time and place. The postmaster's description of appellant's treatment following the Crain affair is altogether general and vague. This same deficiency is found in the statements of coworkers. Ms. Pamplin witnessed whistling, heckling and comments by one clerk in particular and by others whose names she did not know, but she did not quote what she heard and did not fix the utterances as to time and place. Accusations of mental illness and the joke related by Ms. Freel, while generally consistent with the work environment alleged, are likewise not sufficiently specific or fixed as to time and place. In the case of *David W. Shirey*,[10] the employee asserted that he had been called a "sucker" by a coemployee. The Board found, however, that the employee did not provide sufficient details of specific verbal exchanges or incidents, such that his assertions represented only vague and general allegations of long-term job dissatisfaction, which was not compensable. Such is the case here.

The statement of Ms. Ott supports that rumor and gossip existed in the workplace, particularly concerning appellant's attire, but the Board has held that this is not compensable under workers' compensation. In the case of *Gracie A. Richardson*,[11] the employee asserted that she was devastated by coworkers gossiping behind her back and spreading rumors concerning her marital and personal relationships. The Board found that the employee's reaction to gossip and rumors was a personal frustration that was not related to her job duties or requirements and, therefore, was not compensable.

Also, in the case of *Mildred D. Thomas*,[12] the employee perceived an unsympathetic atmosphere among her coworkers following her return from bereavement leave, and she alleged harassment. The Board held that the employee's perceptions were not compensable and that her general allegations of harassment were not sufficiently specific to support her claim of an emotional disability. So it is in the present case. While appellant has submitted evidence generally supporting that she faced negative feelings and a hostile environment at work, the evidence lacks sufficient detail to permit a finding that a specific instance of harassment or hostility occurred at a particular time and place.

[10] 42 ECAB 783 (1991).

[11] 42 ECAB 850 (1991).

[12] 42 ECAB 888 (1991).

On the prior appeal, the Board found that the evidence submitted at that time was insufficient to establish a specific instance of harassment. Having remanded the case for further development of the evidence, the Board now makes the same finding on this appeal, and on this basis will affirm the denial of appellant's claim for compensation.[13]

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. The factual evidence is not sufficiently specific to establish any single compensable incident.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[13] In the absence of an established compensable incident, it becomes unnecessary to review the medical evidence to determine whether an established compensable incident caused or aggravated appellant's diagnosed emotional condition. *See Richard J. Dube*, 42 ECAB 916 (1991) (when the matter alleged is a compensable factor of employment, and the evidence of record establishes the truth of the matter alleged, the Office must base its decision on an analysis of the medical evidence).