

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

PAMELA D. CASEY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 05-1768
Issued: December 13, 2005**

Appearances:
Timothy Quinn, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 23, 2005 appellant filed a timely appeal of a July 18, 2005 merit decision of the Office of Workers' Compensation Programs, denying her claim for an emotional condition. 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 established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On December 18, 2003 appellant, then a 46-year-old customer services supervisor, filed an occupational disease claim for compensation (Form CA-2) alleging that she sustained an emotional condition as a result of her federal employment. In a narrative statement, appellant alleged that her supervisor, Veronica Gallegos, had created a hostile work environment. She alleged that Ms. Gallegos had pointed a finger at her, called 911, changed her work hours,

followed her around and kept vacancy announcements from her. According to appellant she “turned Veronica in” to a supervisor, Greg Christ, who then retaliated against appellant. Appellant stated that this was similar to a previous situation with a former supervisor, Cliff Baker, who was very hostile to her, yelling and kicking chairs. She alleged that she had turned Mr. Baker in for falsification of clock rings, and then had to file an Equal Employment Opportunity (EEO) action, which was successful. Appellant alleged that, because of her EEO action and because she was a whistleblower, Mr. Christ was retaliating against her. Appellant alleged that on December 2, 2003 she was at a symposium where a Mr. Epperson stated that he hoped no one was falsifying mail volume, which upset appellant. After the symposium a supervisor performed an audit the entire time appellant was working, although there was no need for two supervisors to be present.

In a statement dated January 21, 2004, appellant discussed an October 11, 2003 incident in which Ms. Gallegos told appellant to “behave a little more professional” and appellant told her she was not going to tolerate this harassment. Appellant stated that the supervisor yelled at her to leave. Later, when appellant was leaving work, Ms. Gallegos followed her and picked up the telephone to call 911. According to appellant, no action was taken against Ms. Gallegos for this hostile behavior and an EEO claim was filed.

Appellant submitted witness statements regarding her claim. A coworker, Mr. Leddy, reported that he witnessed Mr. Baker yelling and tightening his fists towards appellant. Another coworker whose name is illegible stated that he witnessed Mr. Baker yelling at appellant, on one occasion for approximately 45 minutes. A supervisor, Jim Taylor, reported in a May 3, 1999 statement that Mr. Baker was removed as station manager in December 1998, following complaints of abusive conduct and poor attendance.

An employing establishment human resources specialist submitted a response dated February 9, 2003. The employing establishment noted the specific allegations and indicated that supervisors Gallegos and Christ denied the allegations made by appellant. It was also noted that Mr. Baker no longer worked at the employing establishment.

By decision dated April 23, 2004, the Office denied appellant’s claim for compensation. The Office determined that appellant had not established any compensable work factors.

Appellant requested reconsideration in a letter dated May 10, 2004 and argued that she was subject to a hostile work environment and harassment. By decision dated August 6, 2004, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim.

Appellant again requested reconsideration and submitted a portion of a June 22, 2001 decision of an administrative law judge with respect to her EEO complaint. The administrative judge noted the testimony of coworkers and stated that Mr. Baker’s version of the events was not credible. The judge stated, “All of the above-mentioned evidence of record leads to the conclusion and I find that complainant was subjected to harassment motivated because of her sex and such harassment had the purpose or effect of unreasonably interfering with her work environment and/or creating a hostile work environment.”

By decision dated July 18, 2005, the Office reviewed the case on its merits and denied modification of its finding that appellant did not establish compensable work factors. The Office did not specifically discuss the findings of the administrative judge in the June 22, 2001 decision.

LEGAL PRECEDENT

To establish a 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.¹

The Board has held that 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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.²

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 reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.³

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered.⁴ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁵

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

ANALYSIS

Appellant's allegations included a claim that she was subject to harassment by supervisor Gallegos. She discussed an October 11, 2003 incident in which Ms. Gallegos taunted her, pointed a finger at her and acted in a hostile manner. The employing establishment reported that Ms. Gallegos denied the allegations. Although appellant indicated that she filed an EEO complaint, there was no evidence submitted with a finding of harassment or other probative evidence sufficient to establish a compensable work factor in this regard.

With regard to allegations of administrative error, such as changing her work hours or hiding vacancy announcements, appellant did not establish a compensable work factor. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁶ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁷ In this case appellant did not submit any probative evidence of error or abuse with respect to any specific administrative actions. Appellant also alleged retaliation by Mr. Christ for filing EEO actions, but she did not submit detailed descriptions of incidents of alleged retaliation, or submit probative evidence of retaliation.

There is, however, evidence with respect to a claim of harassment and hostile work environment regarding the actions of Mr. Baker. Although the entire decision is not of record, the June 22, 2001 decision of the EEO administrative judge appeared to include a finding of harassment. The Office did not acknowledge the finding by the administrative judge or otherwise make a finding as to this evidence. It is well established that, while the findings of other federal agencies are not dispositive with regard to questions arising under the Act, such evidence may be given weight by the Office and the Board.⁸

On return of the case record, the Office should secure a complete copy of the June 22, 2001 decision and make an appropriate finding with respect to the alleged work factor. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the record contains probative evidence with respect to a claim of harassment and the case will be remanded to the Office for further development.

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *See Michael A. Deas*, 53 ECAB 208 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 18, 2005 is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: December 13, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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