United States Department of Labor
Employees' Compensation Appeals Board

SHERYL L. GREY, Appellant	)	
and	)	**Docket No. 05-1867**
	)	**Issued: December 28, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Dean Albrecht, 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
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On September 7, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 3, 2005 in which an Office hearing representative affirmed the denial of her claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the emotional condition issue.

ISSUE

The issue is whether appellant has met her burden of proof in establishing an emotional condition in the performance of duty.

FACTUAL HISTORY

On May 27, 2004 appellant, then a 46-year-old limited-duty rural carrier associate, filed a claim alleging that she developed stress/anxiety with regard to an incident in the manager's office on May 19, 2004. Appellant stopped work on May 20, 2004.

In a May 19, 2004 statement, filed as part of an Equal Employment Opportunity (EEO) complaint, appellant stated that she was called into the office of Shawn Waldron, a manager, on May 19, 2004. When she arrived at Mr. Waldron's office, she stated that he began yelling, berating and harassing her over her telephone skills. Appellant stated that he berated and harassed her for 20 minutes and would not allow her to have a union representative present. She advised that Barbara Daniels, a coworker, witnessed the encounter. With her claim, appellant submitted a May 27, 2004 return to work guidelines from Dr. H. Gerald Siek, an employing establishment physician, who diagnosed anxiety reaction secondary to stress and depression. Also submitted were a diagram of her workplace, a memorandum regarding workplace violence and a May 24, 2004 witness statement from Ms. Daniels, who stated that, on May 19, 2004, appellant was paged to Mr. Waldron's office where she could hear both of them speaking loudly. Ms. Daniels denied hearing any part of the conversation between appellant and Mr. Waldron. The employing establishment also submitted a statement regarding the events of May 19, 2004 and provided statements from James V. Brooks, a supervisor, and Mr. Waldron, which advised that appellant had previously been counseled about her unprofessional telephone skills and was called into Mr. Waldron's office on May 19, 2004 to discuss her poor work performance.

In a June 9, 2004 letter, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested additional supportive factual and medical evidence.

Appellant submitted copies of grievance and EEO paperwork and another statement dated June 28, 2004. In her statement, appellant stated that she did not go to work on May 20, 2004 and, when she told her supervisor, Mr. Brooks, the next day that she was claiming the missed day of work as due to "stress of the situation," she was informed that she had to leave the building due to the employing establishment's policy. She stated that, although she had received "very harsh … abuse" from Mr. Waldron that had reduced her to tears, she was asked to leave the building as if she had done something wrong. Appellant also submitted a June 3, 2004 report from Dr. Siek, a June 18, 2004 report from Carol Lynn Kane, a licensed psychotherapist, and a copy of a February 10, 2004 complaint regarding being passed over for a job when she was seeking medical treatment for a work-related automobile accident.

The employing establishment submitted the result of a June 15, 2004 investigation into appellant's conduct. In a June 10, 2004 letter, Mr. Waldron specifically denied intimidating, harassing or yelling at appellant or seeing her cry. He further related that appellant had been working in excess of her guaranteed average hours and was advised that she would be held to her contractual limit. Mr. Brooks confirmed that it was employing establishment policy that employees with stress claims were not allowed in the building until proper medical documentation was received indicating that they posed no harm to themselves or others.

By decision dated July 30, 2004, the Office denied appellant's claim on the basis that the evidence did not establish that she sustained an injury in the performance of duty. It found that, although the evidence of record supported that appellant had a discussion with Mr. Waldron on May 19, 2004 regarding her telephone skills, there were no compensable work factors as the evidence was insufficient to support her claims of harassment and there was no evidence of error or abuse by the employing establishment in carrying out the May 19, 2004 personnel action.

In an August 5, 2004 letter, appellant requested an oral hearing which was held on May 24, 2005. She testified that she was previously involved in a work-related accident and was working limited duty at the time of the May 19, 2004 incident. Appellant testified that, on May 19, 2004, Mr. Waldron reprimanded her like she was a "little kindergartner" and had told her that she could not speak. She further stated that Mr. Waldron had rolled his chair across the room and said "come on, do you want to power play, come on bring it on" which had terrified and scared her. She stated that when she left Mr. Waldron's office she passed Ms. Daniels, who was working on audit books, and asked whether she had heard the conversation. Appellant stated that Ms. Daniels denied hearing the conversation or hearing Mr. Waldron yell and that she felt that Ms. Daniels did not want to get involved. She stated that she had told Mr. Brooks, her supervisor, about the incident and was told not to come to work for a couple of days. Appellant stated that when she returned to work and she told Mr. Brooks to put her down for "stress" leave, Mr. Brooks asked her to leave and not return until a physician released her. She indicated that this was because of employing establishment policy. Appellant indicated that Mr. Waldron repeatedly got cell telephone calls from his family which could be overheard and involved a lot of arguing. She further stated that Mr. Waldron was loud, hostile to everyone, and had a history of abusing employees on the workroom floor. Appellant stated that everyone knew about his behavior, his drinking problem and his yelling at people. She stated that she had filed a grievance and EEO complaint in the matter and indicated that Mr. Waldron was transferred after the EEO complaint was filed. Appellant submitted medical reports from Dr. Walter E. Afield, a Board-certified psychiatrist, who diagnosed depressive disorder, post-traumatic stress disorder, disc disease in the cervical and lumbar area and chronic pain, and additional reports from Ms. Kane. She also submitted exhibits from her grievance and EEO complaint against Mr. Waldron, evidence regarding her prior workers' compensation claim and other policy documents from the employing establishment.

By decision dated August 3, 2005, an Office hearing representative affirmed the July 30, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

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 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 or 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 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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.[5] 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.[6]

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.[7] The issue is not whether the claimant has established harassment or discrimination under standards applied by the EEO Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.[8] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[9] Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[10]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition as a result of the May 19, 2004 discussion with Mr. Waldron and having to leave the employing establishment premises until it was medically safe to return. The Office denied her claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[8] *See Martha L. Cook*, 47 ECAB 226, 231 (1995).

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

[10] *Id.*

whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The record supports that appellant and Mr. Waldron had a discussion concerning her telephone answering skills on May 19, 2004. Appellant alleged that Mr. Waldron yelled at her and berated her. She filed a grievance and EEO complaint regarding the discussion. Appellant, however, did not corroborate that Mr. Waldron yelled at her or berated her or stated any of the statements alleged during the May 19, 2004 discussion. Although Ms. Daniels supported that both appellant and Mr. Waldron were speaking loudly, her statement does not support that Mr. Waldron berated or yelled at appellant. Moreover, as Ms. Daniels stated that she did not hear the conversation, there is no evidence of what had occurred during the May 19, 2004 discussion. Moreover, there is no final decision in the grievances or EEO complaint filed in this matter that corroborates any of appellant's assertions regarding the tone and content of the conversation at issue. The Board notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[11] It is noted that Mr. Waldron denied intimating, harassing or yelling at appellant. Absent evidence corroborating the incident of harassment, appellant has not shown a compensable factor of employment.[12]

With respect to the purpose of the discussion occurring on May 19, 2004 between Mr. Waldron and appellant regarding appellant's telephone answering skills, the Board finds that this relates to an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.[13] However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[14] In the instant case, appellant did not provide any corroborative evidence to establish that Mr. Waldron's actions during the May 19, 2004 discussion actually occurred. Additionally, there is no evidence that the employing establishment erred or was abusive in having the May 19, 2004 discussion. Thus, appellant has not established a compensable employment factor under the Act with respect to this administrative matter. The Board notes that, while appellant may not have liked the discussion which occurred between herself and Mr. Waldron, this amounts to appellant's dissatisfaction with perceived poor management and constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[15]

Appellant also contended that, even though she had suffered very harsh abuse at the hand of Mr. Waldron that had reduced her to tears, she was asked to leave the building as if she had

[11] *James E. Norris*, *supra* note 9.

[12] *See Ernest J. Malagrida*, 51 ECAB 287, 290 (2000).

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

[14] *Reco Roncaglione*, 52 ECAB 454 (2001).

[15] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

done something wrong. The record reflects, and appellant admits, that it was the employing establishment's policy not to have persons claiming stress to be on the premises until it was medically determined that it was safe for the employee's return. There is no evidence that the employing establishment erred or was abusive in following its administrative policy which required that appellant leave the premises, once she claimed stress as the reason for not being at work on May 20, 2004. Thus, appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

The Office did not accept as factual, and the evidence does not support, that appellant's other allegations concerning Mr. Waldron's behavior during the May 19, 2004 discussion or on the workroom floor had any merit. As previously noted, unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[16] Furthermore, the Board has held that an employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform their duties, which employees will at times dislike, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[17] Thus, appellant has not established a factual basis for her other allegations concerning Mr. Waldron.

Consequently, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[18]

CONCLUSION

Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

[16] *James E. Norris*, *supra* note 9.

[17] *Marlon Vera*, 54 ECAB ___ (Docket No. 03-907, issued September 29, 2003).

[18] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Roger Williams*, 52 ECAB 468, 474 (2001); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2005 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: December 28, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board