

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

TRUDY J. HEMMELMAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sioux City, IA, Employer**

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**Docket No. 04-1694
Issued: February 1, 2005**

Appearances:
Trudy J. Hemmelman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 22, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated May 6, 2004, which denied 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 emotional condition claim.

ISSUE

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

FACTUAL HISTORY

On July 9, 2003 appellant, a 43-year-old rural letter carrier, filed an occupational disease claim alleging that she sustained an emotional condition causally related to mental and emotional abuse, discrimination and work stress. Appellant stopped work on May 23, 2003. She was released to return to work for five hours a day on July 8, 2003, but instead returned to work on July 12, 2003.

Appellant stated that she had returned to work on May 2, 2003, following the death of her son on April 23, 2003. She implicated the following incidents as the cause of her stress: she stated that her coworkers told her that the postmaster had told them that she “was throwing things around” at the hospital during her son’s illness, that she was on medication and had criticized the length of her son’s funeral. She also indicated that Steve Hodgins, a coworker, shared the details of her behavior because of an Equal Employment Opportunity (EEO) complaint she had previously filed against him. She alleged that such rumors about her behavior were not true. She stated that her route had been reevaluated and her pay lessened as a result. She expressed her belief that the postmaster and Mr. Hodgins had lied during a May 22, 2003 meeting with the union steward and that the postmaster had threatened to reduce her route. She further alleged that the employing establishment failed to provide her light duty prior to receipt of her workers’ compensation claim; could not figure out how to correctly pay her and had refused to accommodate her and reduce her route until she filed a claim.

Regarding rumors about her behavior after her son’s death, appellant provided witness statements from coworkers. In an undated statement, Lois Scheitler indicated that the postmaster told her that appellant was throwing things around at the hospital. In an undated statement, Toni Duyen stated that Virginia Rohrbach, the postmaster, commented the day after appellant’s son’s funeral that appellant looked drugged, that she had thrown things all over the hospital room and that she had never been to a funeral which lasted that long. In a May 14, 2003 statement, Ms. Duyen stated that appellant inquired if Mr. Hodgins’ wife had told him about her actions at the hospital and then told the postmaster. She stated that the postmaster had indicated “probably.” On May 13, 2003 the postmaster indicated that she may have heard about what happened at the hospital from Mr. Hodgins.

Appellant also submitted medical evidence. In an August 15, 2003 attending physician’s report, Dr. Richard Brown, a psychiatrist, diagnosed moderate major depression with psychotic features.

In a July 10, 2003 letter, Ms. Rohrbach, the postmaster, noted that other employees had commented about appellant’s reaction to her son’s death and that she had advised those employees that people handle stress differently. She stated that, when appellant returned to work after her son’s death, appellant had stated that her pay was not right and had threatened to sue the employing establishment. The postmaster stated that she had advised appellant to seek counseling from the Employee Assistance Program. She stated that, during a meeting on May 13, 2003 with appellant, a union steward, and Mr. Hodgins, a coworker, appellant screamed at Mr. Hodgins alleging that he had told the postmaster about her cursing and, although Mr. Hodgins denied the allegation, appellant stormed out of the meeting. She further stated that

appellant had no sick leave on May 23, 2003, but that she was advanced sick leave under the Family Medical Leave Act. The postmaster indicated that appellant provided a doctor's note releasing her to work five hours daily on July 7, 2003, but, under the National Agreement, that there was no light-duty work available for appellant. The postmaster denied discriminating against appellant and stated that appellant had made all information public by telling her friends at work her personal business.

In a July 10, 2003 letter, Richard Aspleaf, appellant's supervisor, indicated that appellant was upset when her route evaluation had been reduced approximately eight minutes. He stated that at that time there was a new addition going in on her route and, with the mileage and additional deliveries, more than eight minutes would be added to her route. He advised that he did not state that he would alter her route inspection as those deliveries were not active at the time of the National Count. He further stated that, although appellant stated that the box count on her route was incorrect, a review of the box count on appellant's route was conducted and, as the inspection revealed that, as the boxes were active, the route evaluation was adjusted and was correct.

In a July 30, 2003 letter, Mr. Aspleaf stated that appellant was not working at the time the personal conversation took place between appellant and the postmaster, the conversation was never repeated in full, and that management was trying to defend appellant's actions and emotions. He advised that appellant was very emotional upon returning to duty, she was upset about her pay and the route count and noted that Dianne Landers, a supervisor, had felt threatened by appellant's demeanor and remarks. He stated that appellant had accused management several times of being dishonest and had disturbed the workroom floor. He also indicated that, when appellant found out that rural carriers did not have light duty in their contract, she filed an occupational disease claim. He stated that, when appellant was instructed to return to duty, she stated that she could not return until July 12, 2003. He indicated that the employing establishment had accommodated her by adjusting her pay and route evaluation without doing an actual count of her deliveries and that all rural carriers were instructed not to discuss appellant's personal tragedy or her emotional state. A copy of Ms. Landers' May 27, 2003 statement was submitted which detailed her May 13, 2003 interaction with appellant wherein appellant accused her of trying to change her route so her pay would be less. Ms. Landers' statement also noted that appellant's coworkers were told not to discuss other people's personal business unless that person approached them about it.

In an August 15, 2003 letter, the employing establishment advised that appellant worked limited duty to accommodate another injury, claim number 11-2017632, and worked no more than eight hours daily. They indicated that appellant was off work from May 22 to June 20, 2003 and had progressively increased her hours to an eight-hour day.

By decision dated August 26, 2003, the Office denied appellant's claim finding that the evidence failed to establish that she sustained an emotional condition causally related to her employment.

On September 14, 2003 appellant requested an oral hearing, which was held on March 18, 2004. Appellant, her sister-in-law and son testified. Appellant also testified that: the

employing establishment refused to accommodate her request for part-time work; that she was harassed after her return to part-time limited duty after she filed this claim; on November 22, 2003 her supervisor had a discussion with her about work injuries and unsafe work practices that resulted in her removal from the workroom for cursing at the supervisor; the denial of her request for a route reduction; and the change in her route evaluation resulted in reduced pay.

Appellant submitted a copy of her January 15, 2004 EEO complaint, and related materials, in which she alleged discrimination based on religion, sex, physical and mental abuse from her son's death, stress, her workers' compensation claims for her shoulder, neck and wrist, and retaliatory discrimination on June 14, 2000 when she engaged in EEO activity. She also provided greater detail on the November 22, 2003 incident with her supervisor, Mr. Aspleaf, in which her claims she had filed since 1991 and her unsafe work practices were discussed. She indicated that Mr. Aspleaf advised her to work carefully to avoid accidents. She stated that she "flipped out" and had used the "F" word to Mr. Aspleaf. She stated that Mr. Aspleaf told her to leave the workroom floor.

In a December 3, 2003 statement, Mr. Aspleaf discussed the November 22, 2003 incident. He stated that he wanted to discuss appellant's unsafe work practices that had caused her last accident and review her safety record with her in light of her accident history. He indicated that appellant became very agitated toward him and accused him of saying that her son's death was counted as an accident against her. He stated that he never mentioned her son's death and tried to explain to her that the CA-2s were not counted as an accident. He indicated that appellant became agitated and began swearing and screaming at him. He stated that he informed appellant to contact her steward and that there would be discipline for her failing to work in a safe manner. He indicated that appellant continued to scream and swear, stomped out the door, and returned a few minutes later and continued with screaming and verbal abuse. He stated that he instructed her to leave the workroom floor. He advised that he was extremely shaken during his incident with appellant and considered her demeanor to be threatening. He further stated that there was no discrimination against appellant by any supervisor or employee.

Appellant also submitted a January 15, 2004 letter from her attorney summarizing her allegations. In a March 11, 2004 statement, Laurie Hanlon stated that she left the employing establishment in October 1995 because management was abusive. She opined that management was trying to make appellant appear unstable, dangerous or a "problem" employee. She also opined that management started harassing appellant to either fire her or get her to quit on her own.

Appellant also submitted a July 16, 2003 note requesting that her route be cut; copies of several rural route evaluation forms which showed appellant's route hours and salary; and a foster home licensing report for appellant. The medical evidence submitted consisted of a February 10, 2004 return to work certificate from Dr. Brown which noted that appellant had mental stress due to a hostile work environment and that she was able to work part time; a September 11, 2003 attending physician's report from Dr. Carol Roge, a family practitioner, noting that appellant could return to work on July 8, 2003. She opined, with a checkmark, that appellant's depression, anxiety, grief reaction and adjustment disorder was caused or aggravated by employment activity.

Following the hearing, appellant submitted rural carrier trip forms which showed her work hours; a March 8, 2004 letter from the employing establishment's EEO Compliance and Appeals advising that the accepted issues for her complaint had been dismissed. It noted that the accepted issue had concerned a discussion of her workers' compensation claims, including stress for her son's death, which led to her being asked to leave the workplace and her discrimination complaint based on retaliation for prior EEO activity were dismissed; an undated statement from Toni Dwyer, a coworker, who set forth her allegations of discrimination against the employing establishment which she alleged was in retaliation for her defense of appellant. She indicated that the employing establishment refused to cut appellant's route after her son died even though appellant did not feel that she could handle a nine-hour-plus-a-day route and her doctor had restricted her to work only seven hours a day. Information concerning appellant's EEO complaint alleging vulgar language by a supervisor, coverage of routes, communication issues, handling of a prior work claim and work hours were submitted. Appellant also provided comments on previously submitted management statements from the postmaster and her supervisor along with page eight of an article from the EEO Commission's internet site regarding harassment.

By decision dated May 6, 2004, an Office hearing representative affirmed the August 6, 2003 decision finding that appellant had not established any compensable factors of employment.

LEGAL PRECENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹

To establish appellant's occupational disease claim that she sustained an emotional condition in the performance of duty, she must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to a claimant's employment with the Federal Government. 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. The same result is

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employment or by the nature of the work.³ The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disability resulting from an employee's feelings of job insecurity or the desire for a different position, promotion, or job transfer does not constitute personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act.⁴

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.⁵ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁶ Where appellant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.⁷

Actions of a claimant's supervisors or coworkers, which are characterized as discrimination or harassment may constitute a compensable factor of employment. However, for discrimination or harassment to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination alleged did, in fact, occur.⁸ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁹ An employee's allegation that she was harassed or discriminated against is not determinative of whether or not the alleged incident of harassment or discrimination occurred.¹⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.¹¹ Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹²

ANALYSIS

Appellant seeks compensation for an emotional condition that she attributes to management's spreading rumors about her behavior during and following the death of her son

³ See *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*; see also *Anthony A. Zarcone*, 44 ECAB 751 (1993). See generally 5 U.S.C. §§ 8101-8193.

⁵ *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *Elizabeth Pinero*, 46 ECAB 123 (1994); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁷ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁸ *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁹ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹⁰ See *William P. George*, 43 ECAB 1159 (1992).

¹¹ See *Frank A. McDowell*, 44 ECAB 522 (1993).

¹² *James E. Norris*, 52 ECAB 93 (2000).

and the spread of such rumors by her coworkers; her supervisor's threat to reprimand her for unsafe work habits and harassment of discussing her work accidents and workers' compensation claims with her. She also alleged several administrative or personnel actions as contributing to her condition which she thought were harassing and discriminatory. These include: the reduction of her route which resulted in a loss of pay; being threatened with a route cut; her light-duty request not being accommodated until she filed a claim; and being removed from the workroom floor on November 22, 2003 following a verbal altercation with her supervisor.

Appellant alleged that Mr. Hodgins, a coworker, and Ms. Rohrbach, the postmaster, spread rumors about her behavior after her son's death and that such rumors, which she alleged were untrue, were spread by her coworkers. Appellant provided specific details of the rumors she alleged the employing establishment started and submitted statements from coworkers Ms. Scheitler and Ms. Duyen which indicated that appellant's behavior around the time of her son's death was being discussed. Office gossip and rumor, however, are not compensable factors of employment. In *Gracie A. Richardson*,¹³ the employee asserted that she was devastated by perceptions of coworkers gossiping behind her back and spreading rumors concerning her marital and personal relationships. The Board found that the employee's emotional reaction to such gossip was not related to her job duties or requirements and, therefore, was not compensable. In this case, the Office hearing representative found, and the record supports, that appellant's supervisors and coworkers had acknowledged that it was public knowledge that appellant had lost her son, but denied participation in spreading rumors that were untrue or lies. The Board finds that appellant has not established a compensable work factor as she did not establish that specific rumors she believed were untrue or that the rumors had any direct relationship to the duties she was hired to perform.

Appellant also alleged that she was harassed, abused and discriminated against by her managers in various administrative and personnel actions. Appellant alleged that on November 22, 2003, her supervisor, Mr. Aspleaf, had threatened to reprimand her for filing work claims, had directed her to work safer and had removed her from the workroom floor for cursing. The Office's hearing representative found, and the record supports, that Mr. Aspleaf acknowledged that he wanted to discuss appellant's work claims and had attempted to review her safety record with her, but that appellant became upset, was screaming and cursing at him and that he had to remove her from the workroom floor. An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which a supervisor exercises supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that, in the performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not compensable, absent evidence of error or abuse.¹⁴ Although appellant implied that her supervisor had provoked her behavior which resulted in her removal from the workroom floor, there is no evidence that Mr. Aspleaf's actions in having a discussion with appellant about her accidents and safety habits was abusive or in error. Other than appellant's own disagreement, there is no evidence to support that such discussion about appellant's accidents and safety habits was inappropriate.

¹³ *Gracie A. Richardson*, 42 ECAB 850 (1991).

¹⁴ *Daniel B. Arroyo*, 48 ECAB 204 (1996).

Moreover, there is no showing that Mr. Aspleaf's supervisory discretion was abusive when he removed her from the workroom floor because of her cursing. Appellant's removal from the workroom floor appears appropriate under the circumstances and cannot be considered to be harassment of any sort, but rather proper administrative handling of the situation as appellant, herself admitted that she had "flipped out" and had cursed. Accordingly, no harassment or administrative error or abuse was established.

Appellant has also alleged that other administrative/personnel actions by the employing establishment were abusive and constituted harassing and discriminatory behavior. These included her allegations pertaining to the reduction of her route which resulted in a loss of pay; being threatened with a route cut; and her light-duty request not being accommodated until she filed a claim.¹⁵ The employing establishment directly refuted appellant's contentions and provided a detailed explanation for their actions in each of the actions. Appellant, however, failed to provide any probative evidence to establish that the actions taken were abusive or in error. Although appellant offered an undated statement from Ms. Dwyer and a March 11, 2004 statement from Ms. Hanlon in support of her allegations, there is no evidence that either Ms. Dwyer or Ms. Hanlon had any direct knowledge or had personally witnessed any specific incident or event. Accordingly, appellant has not established that the employing establishment's actions were abusive or in error or that the employing establishment had engaged in harassment of her.

The Board notes that appellant has submitted voluminous materials and information from her EEO claim, which contain allegations of harassment, retaliation and discrimination on her supervisor's part. The Board finds, however, that the documents fail to provide sufficient support to establish that the employing establishment committed error or abuse in these administrative matters with specific reference to appellant or that she was harassed, retaliated or verbally abused by her supervisor. Furthermore, the employing establishment's EEO Compliance and Appeal office had dismissed her claim and there is no final action regarding appellant's EEO claim. Accordingly, appellant has not established a compensable factor in this regard.

As none of appellant's allegations of harassment, discrimination, or retaliation were substantiated as having occurred as alleged or as being administratively improper, erroneous or abusive, she has not established compensable factors of employment as causing her emotional condition. Therefore, the medical evidence need not be addressed.¹⁶

CONCLUSION

As appellant has failed to implicate any compensable factors of her employment in the development of her alleged emotional condition, she has not met her burden of proof to establish her emotional condition claim.

¹⁵ Matters pertaining to the assignment of work is an administrative function of a supervisor. See *Beverly R. Jones*, 55 ECAB ___ (Docket No. 03-1210, issued March 26, 2004).

¹⁶ See *Donna Faye Cardwell*, *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 6, 2004 is affirmed.

Issued: February 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member