

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

VERONICA M. COPELAND, Appellant)	
)	
and)	Docket No. 04-1671
)	Issued: March 15, 2005
U.S. POSTAL SERVICE, POST OFFICE,)	
Newburgh, NY, Employer)	
)	

Appearances:
Veronica M. Copeland, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 21, 2004 appellant filed a timely appeal from an April 1, 2004 decision of the Office of Workers' Compensation Programs, which denied modification of a January 13, 2003 decision, finding that she did not sustain an emotional condition in the performance of duty. 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 met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 15, 2002 appellant, then a 40-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 2002 she experienced work-related chest pains after a discussion with management regarding her current assignment and being reassigned

to the manual aisle, which she characterized as a hostile work environment. She stopped work on November 14, 2002. Appellant submitted duty status reports dated November 19, 2002 from a physician whose signature is illegible and notes from a nurse dated December 3, 2002. She also submitted a November 14, 2002 report from Dr. Thomas Mangiaracino, an emergency room physician, indicating that she was treated for hypertension and chest pain after a stressful conversation at work.¹

In an undated memorandum, Edmund A. Cubas, Jr., manager of district operations, controverted appellant's claim. On November 1, 2002 he was made aware that she was not supervising the "FSM 1000" operation and when he questioned her, she alleged that they were "running loose." Mr. Cubas explained that on November 5, 2003 he again questioned appellant regarding why she was not supervising the "FSM 1000?" He reported that she indicated that she did not wish to supervise two sections. Mr. Cubas alleged that he explained that the sections had been combined; however, appellant related to him that it was a difficult section. He informed her that he was certain that she could handle the situation; however, when appellant asserted that it was a hostile environment, he assigned her to the manual letter aisle on November 16, 2002. Mr. Cubas explained that appellant felt that being assigned to the manual letter aisle was a form of punishment, which he denied, explaining that it was the only section that he had open. Mr. Cubas questioned appellant regarding the hostile work environment allegations and the only example that she offered him was that Tammy Kelleher, an employee, was allowed to get away with things and was reimbursed for time that she went home to change her shoes. He alleged that on November 13, 2002 he was advised by two coworkers that appellant was having chest pains.

Barry Sylverstein, a supervisor, provided additional information relating to circumstances concerning appellant. On November 1, 2002 he informed Mr. Cubas that an area referred to as the M1000 was not being supervised by anyone and inquired into who was supposed to supervise that area. Mr. Cubas was informed that appellant was supposed to supervise the area. Mr. Sylverstein alleged that on November 5, 2002 the area was again unsupervised and it was noted that a meeting would be held with appellant. On November 6, 2002 Mr. Sylverstein explained that appellant was questioned by Mr. Cubas regarding why she was not supervising the area and related that she was "adamantly against it" and related that the "crew was unmanageable." Appellant related that she did not feel that she should be hassled into running two sections. Mr. Sylverstein noted that Mr. Cubas explained that the two sections had less people than any of the other sections and that she had done a good job previously; however, appellant noted that she did not want to "put up with those people and won't." She related that she felt threatened as it was a "hostile work environment." Mr. Sylverstein indicated that another meeting was held on November 13, 2002 and when appellant again indicated that she did not wish to supervise the M1000 section, Mr. Cubas offered her the choice of taking over the manual letter aisle, at which point she related that this was unfair and that she was being punished. Mr. Sylverstein stated that, when appellant was questioned regarding what she felt was hostile about the work environment, the only example she provided, was the instance of Ms. Kellerher being paid, when she was sent home to change her shoes. Mr. Sylverstein noted that appellant was angry and related that she was being punished. Thereafter, around 9:30 a.m.,

¹ No listing was available in the certification directories.

Mr. Sylverstein was advised that appellant was having chest pains and she left. He later learned that she had gone to a hospital.

By letter dated December 12, 2002, the Office advised appellant of the factual and medical evidence she needed to submit to establish her claim.

In a January 13, 2003 decision, the Office found that appellant failed to establish that she sustained an emotional condition in the performance of duty. The Office found that her allegations regarding her reassignment to the manual aisle, which she alleged represented a hostile work environment, was an administrative matter and the employing establishment did not commit error. The Office found that appellant had failed to establish any compensable factors of employment.

On January 16, 2003 the Office received a letter dated January 6, 2003 from appellant responding to the Office's December 12, 2002 information request. She alleged that she had an emotional and physical reaction at work on November 13, 2002. Appellant related that on September 14, 2002 she wrote to Mr. Cubas with regard to feeling threatened at work; however, nothing was done about her concerns. She was hospitalized two days later, returned on October 22, 2002 and was reassigned.² Appellant alleged that on November 13, 2002 she was informed that she was reassigned to the manual letter aisle because she had refused to work the M1000 or the AFSM100 and, despite pleading her case, her concerns of a hostile work environment were not addressed. She experienced chest pains shortly thereafter and went to a local emergency room.

The Office subsequently received a copy of appellant's September 14, 2002 letter to Mr. Cubas, his October 28, 2002 response, a November 13, 2002 emergency room report, a duplicate of the November 14, 2002 report from Dr. Mangiaracina, letters dated December 4, 2002 and January 6, 2003 from appellant requesting assistance in procuring a different assignment.³ Appellant alleged that she felt threatened in the workplace after a Step 1 grievance meeting with Ms. Kelleher for wearing improper footwear. While waiting for Ms. Kelleher to clock out because of improper footwear Lisa LaGreca, a union steward, asked her, "[w]hat's the matter, Veronica? You still got a bug up your ass from yesterday?" Appellant requested that Ms. LaGreca not speak to her in an unprofessional manner and Ms. LaGreca indicated that she would speak any way she pleased and another union steward named Jeanette Pignatelli concurred. Appellant alleged that, when she attempted to take the step 1 grievance meeting with Ms. LaGreca and Ms. Kelleher, the steward was confrontational. She alleged that the stewards advised her to seek other employment as she did not belong there and that she felt threatened in her workplace because the actions of the stewards.

On October 28, 2002 Mr. Cubas addressed appellant's concerns of how the stewards addressed her. He indicated that he had heard the comment from Ms. La Greca asking appellant if she had a bug up her ass and related that appellant instructed Ms. La Greca not to speak to her

² Appellant has not alleged that an emotional condition arose on this date.

³ In her December 4, 2002 letter, appellant indicated that she had been out of work since November 13, 2002.

in that manner again he advised appellant that he believed she had handled the situation appropriately.

Appellant requested reconsideration by letter dated January 3, 2004 and submitted additional evidence.⁴ In a December 4, 2002 letter addressed to Robert DeEttore, the plant manager, appellant addressed the reassignment which she alleged was a form of punishment which disregarded her concerns of a hostile work environment. On December 26, 2002 Mr. DeEttore noted that she was unhappy in her position. He indicated that Mr. Cubas did not undermine her authority and was within his supervisory discretion to settle a grievance. In a January 6, 2003 letter to David Soloman, the vice-president of area operations, appellant stated her unhappiness with her assignment and requested his assistance to secure an assignment outside of the area. In a January 21, 2003 response, Mr. Soloman recommended that appellant contact Steven Forte, the senior plant manager, regarding her concerns.

In an April 1, 2004 decision, the Office denied modification of the January 13, 2003 decision, finding that appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT

To establish that she sustained an emotional condition in the performance of duty, an employee 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.⁵ Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.

In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁷ 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 under the Act.⁸ When an employee experiences emotional stress in carrying out her employment 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 results from her emotional reaction to a special assignment or other requirement imposed by the

⁴ The additional evidence included a copy of her January 6, 2003 letter, the duty status report dated November 19, 2002, the Office's December 12, 2002 letter, the workplace definition of violence, the September 14, 2002 letter from appellant and the October 28, 2002 response from Mr. Cubas.

⁵ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ 28 ECAB 125 (1976).

⁷ 28 ECAB 125 (1976).

⁸ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

employing establishment or by the nature of her work.⁹ 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 under the Act. 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 Act.¹⁰ 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.¹¹

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.¹² 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.¹³

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that her emotional condition arose when she was directed to work in the manual letter aisle, which she considered a hostile work environment, after a discussion with management regarding her current assignment. Allegations that the employing establishment attempted to place an employee in unacceptable positions fall into the category of administrative or personnel actions, unrelated to the employee's regular or specially-assigned work duties and

⁹ *Lillian Cutler*, *supra* note 6

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 6.

¹² See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹³ *Id.*

do not fall within the coverage of the Act.¹⁴ As noted above, frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.

Appellant alleged that the manual letter aisle was a hostile work environment because she would be supervising several individuals who had been insubordinate to her. She noted her disagreement with management's decision to pay a subordinate administrative leave after a step 1 grievance and the manner in which her supervisor handled a situation after the subordinate addressed her inappropriately. Administrative and personnel matters also include matters involving the training or discipline of employees.¹⁵ The Board has held that an administrative or personnel matter will not be considered to be an employment factor unless 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.¹⁶

The employing establishment denied any error or abuse. Mr. Cubas, a manager, denied that appellant was forced to work in a hostile work environment. He explained that he was notified that she was not working in the "FSM 1000" section as it was a difficult section and appellant did not wish to supervise it. Mr. Cubas then assigned her to the manual letter aisle because it was the only section that he had open. The only example appellant could provide to him regarding how the manual letter aisle was a hostile environment, concerned Ms. Kelleher, whom she alleged was allowed to get away with things and was reimbursed for her time when she went home to change her shoes. Mr. Sylverstein corroborated the events leading to appellant's reassignment. He explained that she did not want to supervise the FSM 1000 area and, after she explained her reasons for not wanting to do so, it was determined that she could supervise the manual letter aisle. Mr. Sylverstein related that appellant believed that this was unfair and that she believed that she was being punished. However, Mr. Cubas denied that she was being reassigned as a form of punishment and that he was only honoring her request that she supervise the FSM 1000 section. He explained that the manual letter aisle was the only place open. The Board finds that appellant did not provide sufficient evidence to support her allegations that the actions of her supervisors were unreasonable. Instead, it appears that her supervisors were seeking to accommodate her after she expressed reluctance to work in her assigned area.¹⁷ Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Appellant also alleged that the transfer to the manual aisle was a form of punishment which occurred after a step 1 grievance meeting with Ms. Keller for wearing improper

¹⁴ An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

¹⁵ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

¹⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁷ See *James E. Norris*, 52 ECAB 93, 101 (2000) (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).

footwear.¹⁸ She also alleged that the actions of other supervisors and the way they spoke to her, specifically Ms. LaGreca, created a hostile environment. Verbal altercations with supervisors and employees when sufficiently detailed and supported by the evidence, may constitute a compensable factor of employment.¹⁹ Mr. Cubas explained that appellant was transferred after she indicated that she did not wish to supervise the FSM 1000 and the only other opening he had was in the manual aisle. She referred to the instance where Ms. LaGreca spoke to her unprofessionally and asked if she had a “bug up her ass.” Mr. Cubas confirmed that appellant had handled the situation appropriately. In this case, her concern pertains to the actions or lack of action by her supervisor following the statement by Ms. LaGreca. The employing establishment confirmed that Mr. Cubas had settled the grievance, as it was within his authority. The fact that he settled a grievance, at which she had been involved at a lower lever, does not, by itself, establish that appellant was being treated unfairly or punished.²⁰ Additionally, to the extent that appellant did not go to the assigned area because of a fear-of-future injury, the Board has held that the possibility of a future injury, however, does not constitute an injury under the Act.²¹ In these circumstances, the Board finds that the employing establishment’s actions concerning reassigning her, paying an employee administrative leave as part of the grievance process and advising appellant that she handled the situation correctly in response to inappropriate language and requesting that workers be treated with respect do not constitute compensable employment factors.

For the foregoing reasons, appellant has not established any compensable factors of employment under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.²²

CONCLUSION

For the foregoing reasons, as 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 The record does not reflect that appellant is alleging that the Step 1 meeting caused her emotional condition.

¹⁹ *Janet D. Yates*, 49 ECAB 240 (1997).

²⁰ *See Marguerite J. Toland*, 52 ECAB 294, 299 (2001). 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 supervisory discretion fall, as a rule, outside the scope of the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.

²¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

²² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 1, 2004 is affirmed.

Issued: March 15, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member