

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

ROSA GAONA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Anchorage, AK, Employer**

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**Docket No. 05-81
Issued: May 13, 2005**

Appearances:
Gordon Reiselt, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 4, 2004 appellant filed a timely appeal of a September 8, 2004 merit decision of the Office of Workers' Compensation Programs denying modification of a December 1, 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 emotional condition issue.

ISSUE

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

FACTUAL HISTORY

On September 3, 2002 appellant, then a 48-year-old letter carrier, filed a claim alleging that she incurred stress, mental anguish and fear on August 5, 2002 when an employee told her that the union president wanted her fired. She stopped work on August 6, 2002 and did not

return. Appellant submitted evidence pertaining to a March 26, 2002 incident involving a dispute between Brian Russell, a coworker, and herself.

In a letter dated September 7, 2002, the employing establishment controverted the claim. The employing establishment noted that there was no evidence that Christopher Dargan, the union president, told Mr. Russell that he wanted appellant fired.

In a letter dated September 16, 2002, the Office advised appellant that the evidence she submitted was insufficient to establish her claim as there was no evidence that the event actually occurred. The Office informed her of the type of factual and medical evidence required to establish her claim.

In a September 27, 2002 statement, appellant advised that the source of her stress at work began with a slip and fall injury in October 1995. She alleged that since this injury, she had been treated “very unfairly, beginning with being off work, claim denials and monetary set backs.” Appellant indicated that she filed complaints with the National Labor Relations Board and the Equal Employment Opportunity (EEO) Commission against Mr. Dargan, the union president, but that no final decisions had been reached. She also submitted materials pertaining to a March 26, 2002 incident, in which both appellant and Mr. Russell were given an official discussion and had no disciplinary action taken. Mr. Russell provided a signed statement indicating that on March 26, 2002 Mr. Dargan, the union president, told him that he was going to make sure that appellant was fired. Appellant learned of this on August 5, 2002.

Appellant also submitted medical reports from Dr. Robert Schults, a Board-certified psychiatrist, and Dr. Maureen Longworth, a Board-certified family practitioner. In an August 23, 2002 report, Dr. Longworth reported that appellant felt uncomfortable at returning to work knowing that the union president wanted to fire her and this created a hostile work environment for her. Dr. Longworth diagnosed work-related stress and depression. In an October 10, 2002 report, Dr. Schults diagnosed a major depressive disorder, alcohol abuse and post-traumatic stress disorder, but did not discuss the episode of August 5, 2002 in his report.

By decision dated October 24, 2002, the Office denied appellant’s claim on the grounds that the evidence did not establish an injury in the performance of duty. The Office accepted that Mr. Russell told appellant that the union president, Mr. Dargan, had informed him that he wanted appellant fired.

In a letter dated November 22, 2002, appellant requested a hearing, which was held August 18, 2003. She testified that she had been harassed and intimidated since she injured her back in 1995. Appellant stated that her back injury never healed, the employing establishment did not accommodate the injury, her claim for the back injury was denied and she never received a response from the Office with respect to her request for an oral hearing on her denied claim. She filed a stress claim in 1998 and the episode of August 5, 2002 was “the final straw.” Appellant became emotionally distraught over her prior claim being denied and the harassment she received due to her back injury. She also stated that she became depressed from being out of work for such an extended period. Appellant testified that the August 5, 2002 incident, when a coworker informed her that the union president and the employing establishment wanted to fire her, shocked her. In a September 5, 2003 report, Dr. Charles T. Ellis, a psychiatrist, diagnosed

appellant with post-traumatic stress disorder and major depression related to a hostile work environment.

In a decision dated December 1, 2003, the Office hearing representative affirmed the October 24, 2002 decision. He found that appellant had not established any compensable factors of employment.

In a letter dated August 27, 2004, appellant, through her attorney, requested reconsideration, contending that the Office's December 1, 2003 decision was defective and erroneous for ignoring the October 24, 2002 finding of fact with respect to the union president saying that he wanted to get appellant fired.

By decision dated September 18, 2004, the Office denied modification of the December 1, 2003 decision.

LEGAL PRECEDENT

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 work 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

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.³ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative or personnel matter, coverage will be afforded.⁴ In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁵

¹ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

² *Gregorio E. Conde*, 52 ECAB 410 (2001).

³ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 556 (1991).

⁴ See *William H. Fortner*, 49 ECAB 324 (1998).

⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

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.⁶ 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.⁷

ANALYSIS

Appellant has alleged that her work-related stress condition arose from: her prior back injury of 1995 and the claim being denied; being off work for extended periods of time; being harassed and intimidated by management due to her prior injury and the fact that the employing establishment failed to accommodate her restrictions; and being informed by a coworker that the union president wanted her fired. The Office has denied appellant's emotional condition claim on the grounds that she did not establish any compensable factors of employment. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The majority of appellant's allegations concern administrative or personnel matters, unrelated to her regular or specially assigned work duties. Such matters are generally related to the employment, but are administrative functions of the employer, not duties of the employee. Coverage will only be afforded regarding such matters only if error or abuse by the employing establishment is established.⁸ Regarding appellant's allegations that the employing establishment mishandled her previous compensation claims for a back injury and an emotional condition, the Board has generally held that the processing of compensation claims bears no relation to day-to-day or specially assigned duties.⁹ Although the handling of a compensation claim is generally related to employment, it is an administrative function of the employer and not a duty of the employee and thus, not compensable absent evidence of error or abuse by the employer.¹⁰ Appellant has submitted no evidence of error by the employing establishment in handling her previous compensation claims. Thus, she has not established a compensable employment factor.

With respect to appellant's allegations that she was off work for extended periods of time and her being informed by a coworker that the union president was trying to get her fired, the

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Id.*

⁸ *Janet I. Jones*, 47 ECAB 345 (1996).

⁹ *See George A. Ross*, 43 ECAB 346 (1991).

¹⁰ *Janet L. Terry*, 53 ECAB 570 (2002).

Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ The Board finds that appellant's allegations that these events were stressful, relate to administrative or personnel matters for which she has not established that the employing establishment erred or acted abusively.¹² Additionally, appellant's fear of being terminated upon learning of comments by coworkers is not covered under the Act.¹³ The record establishes that neither the union president, who allegedly wanted her fired, nor the employee who told her about the comment, had any decision-making authority regarding appellant's employment status, nor is there any evidence that the union president made the comment directly to her or that the employing establishment communicated the statement to appellant. While the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability.¹⁴ Appellant's reaction to such a declaration, therefore, does not arise to be within the performance of her regular or specially assigned duties and, thus, cannot be considered a compensable factor of employment.¹⁵

Appellant has also alleged harassment and intimidation by employing establishment management officials due to her prior injury and the fact that the employing establishment failed to accommodate her restrictions. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.¹⁶ In this case, however, appellant has not provided sufficient evidence, such as witness statements to establish that the alleged harassment actually occurred.¹⁷ Moreover, she has not presented specific incidents of alleged harassment and discrimination and her general statements that she was harassed by management are not specific enough to be considered for coverage under the Act. Allegations alone are insufficient to establish a factual basis for an emotional condition claim.¹⁸ The Board, therefore, finds that appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

¹¹ See *Trudy A. Scott*, *supra* note 1; *Lillian Cutler*, *supra* note 1.

¹² See *Janet I. Jones*, *supra* note 8.

¹³ See *Artice Dotson*, 42 ECAB 754 (1990).

¹⁴ See *Michael A. Deas*, 53 ECAB 208 (2001).

¹⁵ See *Gracie A. Richardson*, 42 ECAB 850 (1991) (fear of gossip is a personal frustration which is clearly not related to job duties or requirements and is not compensable).

¹⁶ *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁷ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁸ 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).

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as she failed to substantiate any compensable factor of employment. As she did not establish any compensable factor of employment, the medical record need not be addressed.¹⁹

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

¹⁹ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).