United States Department of Labor
Employees' Compensation Appeals Board

DENESE SCOTT, Appellant	)	
and	)	**Docket No. 05-418**
	)	**Issued: May 17, 2005**
U.S. POSTAL SERVICE, SOUTHWEST STATION POST OFFICE, Washington, DC, Employer	)	

Appearances:
Denese Scott, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 6, 2004 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated November 8, 2004, denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the emotional condition issue in this case.

ISSUE

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty as alleged.

FACTUAL HISTORY

On March 29, 2002 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2002 her supervisor called her a "smart ass on the workroom floor. She also alleged "harassment, [a] hostile environment" and "derogatory statements." On January 23, 2003 appellant filed a traumatic injury claim alleging that on January 10, 2003 she sustained stress, "embarrassment [and] personal violation" when "taunted [and] teased" at work. Jalahn Wellington, her supervisor, noted that on January 10, 2003 appellant "became upset when she notice[d] the injury and illness report which [the employing

establishment was] required to post." She left work on January 10, 2003 and was off work through February 11, 2003.

Appellant submitted a January 13, 2003 statement from Regina Rogers, a coworker and a union steward, corroborating her account of being taunted by coworkers on January 10, 2003 when they read a posted Occupational Health and Safety Administration (OSHA) report listing appellant as having a psychiatric condition. Ms. Rogers asserted that the employing establishment violated personnel rules by posting confidential medical information. She noted that she requested that Mr. Wellington take down the posted list but he refused.

In a May 14, 2003 letter, the Office advised appellant of the type of additional evidence needed to establish her claim, including objective findings from her doctor establishing the claimed emotional condition and the doctor's opinion, with medical reasons, on the cause of her condition.

In June 10, 2003 letters, appellant alleged that, on March 27, 2002, Mr. Wellington overheard her discussing a scan point with two other carriers and called her a "smart ass." She asserted that Mr. Wellington and several coworkers then laughed at her. Appellant also alleged that on January 10, 2003 the employing establishment posted an OSHA roster of employees with occupational injuries, listing appellant as having a psychiatric injury. Her coworkers gathered around the list, taunting her by calling her crazy, apologizing for past remarks and asking her not to come to work as they were afraid she would kill them. Appellant asserted that Mr. Wellington joined in the teasing, which lasted 20 to 25 minutes. She asked Mr. Wellington to remove the list but he refused. Appellant went to the bathroom and cried, then received permission to leave work. She also alleged harassment by Mr. Wellington for "several years." Appellant asserted that Mr. Wellington changed her residential route to a business route with heavy express mail volume, including office buildings and several strip clubs. She also alleged that Mr. Wellington threatened to fire her.

Appellant submitted a copy of the OSHA injuries roster, listing her as having a "nervous system/psychological" injury or condition. The document notes that it contained "information regarding employee health and must be used in a manner that protect[e]d the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes."

Appellant submitted evidence in support of her claim from health care workers associated with her health maintenance organization (HMO). An April 5, 2002 verification of treatment form does not contain a legible signature. In January 10, 2003 notes, Linda Felder, a social worker, and Lavrisha Martin, a nurse, described the January 10, 2003 incident and appellant's ongoing conflict with her supervisor. In a January 14, 2003 note, Francine B. Gemmell, a registered nurse, mentioned a recent workplace incident involving appellant's reaction to a posted injury list. Ms. Gemmell submitted January 30 and February 11, 2003 follow-up notes. Benilda Shaheed, a social worker, provided notes dated March 5 to 26, 2003 addressing appellant's participation in a work issues group.

By decision dated November 5, 2003, the Office denied appellant's emotional condition claim on the grounds that she had not established fact of injury. The Office noted that the two

traumatic injury claims had been combined into one occupational disease claim. The Office found that the following incidents were established as factual but did not occur in the performance of duty: Mr. Wellington called her a "smart ass" on March 27, 2002; coworkers teased her on January 10, 2003 after management posted an injuries list noting that appellant had a psychiatric condition; Mr. Wellington laughed at the taunts of appellant's coworkers; shop steward Ms. Rogers demanded that Mr. Wellington remove the report; he refused to remove the report; Mr. Wellington threatened to fire appellant; her route was changed from a residential route to a commercial route with a large volume of express mail. The Office noted that the social workers and nurses were not considered physicians as defined under the Federal Employees' Compensation Act.

In a December 1, 2003 letter, appellant requested an oral hearing, held May 26, 2004. At the hearing, she alleged that on January 10, 2003 numerous coworkers told her "Neecie, this, Neecie, you're crazy Neecie, don't come to work and kill us. I didn't know you were so crazy." Appellant asserted that the employing establishment posted a confidential injury report noting her psychiatric illness. She went to Mr. Wellington to have the notice removed. Mr. Wellington was initially reluctant, but eventually removed the notice at the direction of two shop stewards. Marva Glenn, appellant's mother, testified at the hearing that appellant called her from work on January 10, 2003 and that she could hear laughter and the phrase "you're crazy, you're crazy." The hearing representative described the type of medical evidence needed to establish her claim, emphasizing the need for medical rationale establishing a causal relationship between the January 10, 2003 incident and the claimed emotional condition.

After the hearing, appellant submitted a June 11, 2004 report from Ms. Felder noting that she was seen on January 10, 2003 due to an upsetting workplace incident.

By decision dated and finalized November 8, 2004, the Office hearing representative modified the Office's November 5, 2003 decision, finding that appellant had established as factual that the employing establishment posted the injury listing noting her psychiatric condition and that several of her coworkers began "teasing and taunting her." The hearing representative found that "the posting of the document on the employer's bulletin board was not erroneous or abusive in nature." The hearing representative further found that the "taunting by several of the claimant's coworkers was abusive in nature" and, therefore, occurred in the performance of duty. However, the hearing representative found that appellant submitted insufficient medical evidence to establish a causal relationship between the accepted work factor and the claimed emotional condition.

LEGAL PRECEDENT

The Act provides for payment of compensation for personal injuries sustained while in the performance of duty.[1] Where disability results from an employee's 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.[2] As a rule, allegations alone by a claimant are insufficient to

[1] 5 U.S.C. § 8102(a).

[2] 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

establish a factual basis for an emotional condition claim.[3] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[4]

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.[5] If a claimant implicates 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] The Board has held that a medical opinion, in general, can only be given by a qualified physician.[7] Section 8101(2) of the Act defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.[8]

ANALYSIS

The Office accepted as compensable that appellant's coworkers teased and taunted her about her psychiatric condition on January 10, 2003. However, the Office found that she submitted insufficient medical evidence to establish that the accepted factor caused or contributed to her claimed emotional condition.

In support of her claim, appellant submitted reports from Ms. Felder and Ms. Shaheed, both social workers. The reports of social workers do not constitute competent medical evidence, as a social worker is not a "physician" as defined by 5 U.S.C. § 8101(2).[9] Appellant also submitted reports from Ms. Gemmell and Ms. Martin, both registered nurses. However, the reports of a nurse do not constitute competent medical evidence as a nurse is not defined as a physician under section 8101(2) of the Act.[10] There is no evidence of record that any of the

[3] *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).

[4] *Linda J. Edwards-Delgado*, 55 ECAB ___ (Docket No. 03-823, issued March 25, 2004).

[5] *See Normal L. Blank*, 43 ECAB 384 (1992); *see Barbara Bush*, 38 ECAB 710 (1987).

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

[7] *Ricky S. Storms*, 52 ECAB 349 (2001).

[8] 5 U.S.C. § 8101.

[9] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004).

[10] *Vicky L. Hannis*, 48 ECAB 538 (1997).

submitted reports were signed or reviewed by a physician. The April 5, 2002 form does not contain a legible signature and it cannot constitute medical evidence in this case.[11] These reports and the opinions contained therein are of no probative value. Appellant has not submitted medical evidence establishing the requisite causal relationship in this case.

The Office also found that several of appellant's allegations did not constitute compensable factors of employment.

Although the Office accepted that appellant's coworkers teased her on January 10, 2003 as a posted injury list noted her psychiatric condition, the Office found that the employing establishment did not commit error or abuse by posting this list. Administrative functions of the employer such as the handling of personnel records[12] are not considered to be within the performance of duty, error or abuse in carrying out such functions of the employer may constitute a compensable factor of employment under the Act.[13] While Ms. Rogers, appellant's coworker and a union steward, asserted in her January 13, 2003 statement that posting the list violated administrative rules, this statement in and of itself, is insufficient to establish administrative error or abuse. The injury list advised that employee confidentiality must be protected "to the extent possible while the information is being used for occupational safety and health purposes." There was no prohibition against any specific form of disclosure, including posting the list where employees could read it. The Board finds that appellant has not submitted sufficient evidence to demonstrate that posting the injury list constituted error or abuse by the employing establishment.

Appellant also attributed her condition, in part, to Mr. Wellington changing her route from a residential area to a business district with high express mail volume. However, the Board has held that an employee's dislike of his job duties or desire for a different position is not a compensable factor of employment.[14] The Board has held that conditions sustained due to a desire for different work duties, is not compensable.[15] The assignment of work tasks is an administrative function of the employer and is not considered to be within the performance of duty unless error or abuse is shown.[16] In this case, the Board finds that appellant has not established such error or abuse. Therefore, her dislike of her commercial route or a desire for different duties is not compensable.

Although the Office accepted as factual that Mr. Wellington called appellant a "smart ass" on March 27, 2002 she did not establish this as a compensable factor of employment. The

[11] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *See Angie Brumfield*, 46 ECAB 867 (1995) (the claimant established that the employing establishment committed compensable error by incorrectly listing her grade in her personnel record. The Board found that this error brought the administrative matter of maintaining personnel records under the coverage of the Act).

[13] *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

[14] *Lillian Cutler*, *supra* note 2.

[15] *Katherine A. Berg*, 54 ECAB ___ (Docket No. 02-2096, issued December 23, 2002).

[16] *Hasty P. Foreman*. 54 ECAB ___ (Docket No. 02-723, issued February 27, 2003).

Board has held that every statement made in the workplace is not a compensable factor of employment. The mere utterance of an epithet which may engender offensive feelings in an employee does not sufficiently affect the conditions of his or her employment to constitute a compensable factor.[17] Under the circumstances of this case as described by appellant, the Board finds that Mr. Wellington's remark to appellant is not compensable.[18]

Appellant also alleged that Mr. Wellington taunted and harassed her, threatened to fire her and created a hostile work environment. Harassment and discrimination by supervisors and coworkers, if established as occurring in the performance of duty, may constitute compensable employment factors.[19] 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 of harassment or discrimination are not compensable under the Act.[20] In this case, the Board finds that appellant did not submit sufficient evidence, such as witness statements to corroborate her allegations of harassment, threats or hostility by Mr. Wellington. Therefore, she has not established a compensable employment factor in this regard.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as she did not submit competent medical evidence establishing a causal relationship between the accepted January 10, 2003 workplace incident and the claimed emotional condition.

[17] *Denis M. Dupor*, 51 ECAB 482 (2000). *See also Cyndia R. Harrill*, 55 ECAB ___ (Docket No. 04-399, issued May 7, 2004) (epithets made in jest or intended as jokes are generally not compensable).

[18] *Cyndia R. Harrill*, *supra* note 17.

[19] *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[20] *Donna J. DiBernardo*, 47 ECAB 700 (1996).

ORDER

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

Issued: May 17, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member