United States Department of Labor
Employees' Compensation Appeals Board

KENDRA S. VANDERLEE, Appellant	)	
and	)	**Docket No. 05-1000**
	)	**Issued: November 15, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Holland , MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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 March 24, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 31, 2005. 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 has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On October 3, 2004 appellant, then a 33-year-old clerk, filed an occupational disease claim alleging that she was subjected to harassment, stress and a loss of position by her management. She also alleged that she developed chest pains and breathing problems as a result

of their actions. Appellant indicated that she first became aware of the injury and its relation to her work on September 11, 2002. She stopped work on August 1, 2004.[1]

In an undated statement, received by the Office on October 21, 2004 appellant outlined those factors which she believed contributed to her claimed condition. She alleged that the employing establishment refused to accept her chiropractor's reports and that she was "tricked" into seeing the employing establishment physician on a weekly basis in lieu of her chiropractor and that she was forced to return to work, despite a driving restriction. Appellant alleged that her request to change physicians was never acknowledged. Further, she related that her employer threatened that, if she did not report for duty, she would have to exhaust her sick leave, and report for duty or lose her job. She indicated that she returned to full duty on May 1, 1998; despite having neck and right shoulder pain that prevented her injury from healing properly. Additionally, appellant alleged that her claims for a recurrence of her right neck and shoulder symptoms on November 25, 1998 and in January 1999, were not initially accepted and that her medical reports remained unpaid such that she had to seek the services of an attorney. She also alleged that there were several issues regarding her salary. They included that management refused to freeze her pay at the correct pay rate at the time of her reinjury, that she did not receive a pay increase in September 2000, and that she was forced to accept a rehabilitation job in September 2000. Appellant also alleged that she filed a grievance to get her pay increase, and that the employing establish tried to "excess" her. In addition, appellant alleged that she lost her job as a rural carrier, which caused stress, that she was harassed by the clerk craft employees while she was in the rehabilitation position as a craft clerk, and that she filed a grievance. Appellant alleged that she took a temporary detail for two years to escape the harassment. She also indicated that she was required to see her physician annually to keep her rehabilitation position, and that, when her neck and shoulder pain finally resolved, the employing establishment harassed her by refusing to clear her and return her to her original position. Appellant alleged that the employing establishment called her at home while on vacation to inform her that she was not returning to her original position. She indicated that this caused the rural craft to be angry with her. Appellant also indicated that she was refused a release to full duty because her physician incorrectly completed a form, and that she later began having problems breathing and chest pains. She indicated that her diabetes was exacerbated by stress at work and that she was forced to complete paperwork regarding the Family Medical Leave Act (FMLA) on various occasions. Appellant indicated that she was required to provide different types of documentation for absences, and that she was humiliated by providing documentation that she was not harmful to herself or others. She alleged that her supervisor blacked out paper work indicating that she was a rural carrier and that she had filed a grievance to regain her position.

Appellant also submitted copies of SF-50 and FMLA forms and copies of union/postal regulations, copies of emails regarding her desire to return to the rural carrier craft and of efforts

[1] The record reflects that appellant had a prior claim for a traumatic injury on January 12, 1998, which was accepted for cervical sprain and subluxation of C6 and thoracic vertebra. She worked with restrictions until April 28, 1998 when she returned to full duty. Further, she filed a claim for recurrence on November 25, 1998, which the Office accepted.

by her supervisor to correct the "freezing" of her pay rate, copies of letters regarding requests for payment of medical bills, copies of disability slips, and physical therapy notes.[2]

In a March 26, 2004 report, Dr. John Le Claire, Board-certified in physical medicine and rehabilitation, released appellant to full unrestricted duty.

By letter dated June 7, 2004, Malcolm Miller, a supervisor, indicated that regarding the issue of whether appellant was properly awarded a bid position and was entitled to return to the rural carrier craft, he noted that she became a clerk on September 9, 2000 when she accepted a rehabilitation job offer. He indicated that appellant had recovered and continued to work in her present craft, and because she was an unassigned regular at the time it was posted, she was assigned to that position. Mr. Miller indicated that appellant was free to request a transfer to the rural craft which upon acceptance, she could return.

In a July 28, 2004 report, Dr. James Bleicher, Board-certified in internal medicine, determined that appellant had stress due to the employing establishment's refusal to return appellant to her regular route after recovering from an employment-related injury. He indicated that since August 2002 appellant had anxiety attacks and depression related to those stressors.

In an August 4, 2004 report, Dr. Nelson Zwaanstra, a psychologist, indicated that appellant's hypoglycemia was exacerbated by work stress. In an August 11, 2004 report, Dr. Zwaanstra, advised that appellant related that she was having increased panic and anxiety and was too anxious to function on the job as she was "stressed by her job." He diagnosed appellant with adjustment disorder with mixed anxiety and depression and indicated that her symptoms were caused by "stress and conflicts on her job."

In a letter dated December 8, 2004, the Office requested that appellant submit additional factual and medical evidence. In a separate letter also dated December 8, 2004, the Office requested that the employing establishment provide comments regarding appellant's allegations.

By letter dated December 24, 2004, Mr. Miller responded to appellant's allegations. Regarding appellant's job assignment, he advised that appellant was assigned to the clerk craft position in accordance with her physician's restrictions. He denied appellant's allegations that she or anyone was excessed. Mr. Miller also indicated that grievances were filed regarding the type of work appellant was doing, regarding the specific job assignment and her returning to a rural craft. He also determined that he did not witness any harassment or receive the names of any witnesses who witnessed harassment. Mr. Miller confirmed that appellant was trying to return to her original position, that FMLA paperwork was required documentation regarding appellant's diabetic reactions, that appellant's clerical craft position was assigned to her after her doctor cleared her restrictions, that Mr. Wentworth, a supervisor, advised her of the type of leave she could take and indicated she could return as a distribution clerk, and that no attempts were made to fire appellant. Regarding appellant's return to the rural craft, he explained that appellant could return as the junior rural carrier, which was the same opportunity for all nonrural postal

[2] She also submitted paper work related to her prior accepted claim; however, that is not before us in the present claim.

employees. Regarding appellant's pay location numbers, he advised that an error was made and that once it was identified, it was corrected and that there was no impact on her work assignment. Mr. Miller explained that rural route qualifications were determined by a national agreement with the employing establishment and the national rural letter carriers' association.

Appellant also submitted a statement in which she provided additional details. She added that Gary Bigones, a supervisor, indicated that he could only accept a note from the fitness-for-duty physician, and that she had to report for duty, despite being unable to drive. Appellant explained that the employing establishment's refusal to accept her chiropractor's notes and the low level of care provided by the employing establishment physician, caused her stress and worsened her condition. She indicated that she sustained a recurrence on January 20, 1999, which was not approved until seven months later, which caused her stress. Further, appellant alleged that the emails were proof that management erred in dealing with the administrative issues regarding her pay, that she was sent to collections because her medical bills were not paid and that her credit was jeopardized. She also indicated that she was told that she had restoration rights, by Mr. Miller, and that the job, that she was given had the title of a clerk, but was not really a clerical position, that she lost her job as a rural carrier, that she was told that she was going to be excessed, and that she lost her schedule. Appellant further indicated that she did not have copies of her grievances, that her doctor indicated her chest pains, shortness of breath and concentration were due to stresses from work, and that a grievance was filled regarding being sent home after having worked.

Appellant also provided copies of previously submitted information.[3] Also included was a statement from Douglas Vanderlee, appellant's husband, in which he indicated that appellant's stress was related to her employment injury and her job, a December 28, 2004 statement from Tammy Haines, a rural carrier, who alleged that she was told that the two auxiliary routes were made on the same side of town to prevent appellant from coming back as a rural carrier, a January 4, 2005 statement from Cheryl Boeskoal, a coworker, who indicated she saw David Wentworth, a supervisor, black out information regarding appellant's pay status, which showed she was a rural carrier.

In a January 3, 2005 report, Dr. Bleicher advised that appellant related that having stress at work in August 1998, February 2001 and in September 2002. Dr. Bleicher also noted that in September 2003 appellant alleged that she was stressed due to her job requiring her to complete her assigned duties without overtime and that she was seen on July 15, 2004 for job stress. He indicated that appellant also missed work due to glycemic episodes and opined that appellant's psychologist "could best assess whether or not her stress was caused, aggravated or accelerated by her job." Dr. Bleicher also noted that appellant had attributed stress to buying a vehicle, selling her house, her husband, sending her kids to school, and chronic pain. He also noted, "I do not know what was actually said or done to her at work."

[3] This included decisions regarding her claim for a recurrence of disability under the physical claim, as well as medical records relative to that claim, FMLA documentation and emails concerning her pay rate.

On January 7, 2005 the Office received a November 10, 2004 report, in which Dr. Zwaanstra advised that appellant was unable to work since July 26, 2004 due to stress from her job. He diagnosed adjustment disorder with mixed anxiety and depression.

In a January 31, 2005 decision, the Office denied appellant's emotional condition claim on the grounds that, as she did not establish any compensable factors of employment, she failed to establish that appellant sustained the claimed conditions in the performance of duty.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4] 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.[5]

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.[6] 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.[7]

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[8] 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[9]

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[4] 5 U.S.C. §§ 8101-8193.

[5] *See Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991); *Lillian Cutler,* 28 ECAB 126 (1976).

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

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

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

[9] *Id.*

ANALYSIS

Appellant attributed her emotional condition to a number of employment incidents and conditions. The Office denied the claim finding that appellant did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Certain of appellant's allegations relate 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.[10] These include allegations that the employing establishment made errors regarding pay rate changes, she was presented with a bill due to an administrative error, she was required to see an employing establishment physician instead of her own physician, she was required to arrive at work despite a driving restriction, she was required to produce current medical evidence to support her limited duty status, she was required to document that she was not harmful to others, her requests to change physician's were ignored, and a manager blacked out information on a form showing that she was a rural carrier. Appellant also alleged that she was called at home regarding her schedule, and regarding her efforts to have her job assignment changed. 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.[11]

Changes in appellant's pay and changes of her job status on forms relate 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.[12] Appellant provided copies of email correspondence showing that her supervisor was attempting to correct her status and which appeared to take several efforts. Mr. Miller from the employing establishment responded that once the internal errors were identified, they were corrected and had no impact on her work assignment. Appellant also alleged that she was presented with a bill regarding her claim; however, the record does not indicate that she had to pay anything out of pocket and the situation was ultimately resolved. She also provided a statement from a witness, Ms. Boeskal, who confirmed that a supervisor blackened out information concerning her pay status and which showed that she was a rural carrier. However, this does not support that the employing establishment's actions were unreasonable. Mr. Miller indicated that appellant became a clerk on September 9, 2000 when she accepted the rehabilitation job offer. The fact that the employing establishment changed incorrect information on a form is not indicative of error or abuse. The Board finds that the employing establishment's explanation is reasonable in light of the circumstances where the

[10] 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). *See also Barbara J. Latham*, 53 ECAB 316 (2002) (the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act).

[11] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[12] *See Michael T. Plante,* 44 ECAB 510 (1993); *Joseph C. DeDonato,* 39 ECAB 1260 (1988).

employing establishment made a good faith effort to correct mistakes when discovered and where any mistakes did not appear to ultimately prejudice appellant's job or pay. Appellant also alleged that she filed a grievance restoring her pay to a higher pay level and to get her former position back. However, she did not submit any decisions or findings resulting from the grievance process that supported that appellant acted unreasonably. Appellant has not established a compensable employment factor in this regard.

Regarding appellant's allegation that she was called at home while on vacation regarding her schedule; the Board has long held that the assignment of a work schedule is an administrative function of the employing establishment and, absent error or abuse, does not constitute a compensable factor of employment.[13] The employing establishment denied any error or abuse in contacting appellant about her schedule. Appellant has not shown how this would be error or abuse and she has not established a compensable employment factor in this regard.

Appellant also alleged that she did not want her present position but wanted her old position back, and that a rural carrier route was not being created so that she could not bid on it. Appellant also alleged that her chest pains and breathing problems were caused by this stress. This reflects dissatisfaction with the type of work assigned, or a desire to perform different duties, which does not come within coverage of the Act.[14] Also, as noted above, the assignment of work and related matters are administrative functions.[15] Appellant has not shown that the employing establishment acted unreasonably in assigning positions to appellant.

Appellant alleged that she was "tricked" into seeing an employing establishment physician instead of her own physician. She alleged that she was required to obtain current medical evidence yearly to maintain her limited-duty status, and that she was required to provide documentation to prove that she was not harmful to others in order to return to work. Further she alleged that her requests to change physicians were ignored and that her claims for recurrence were initially denied, but later accepted. Additionally, she alleged that the employing establishment refused to release her to full duty because her physician incorrectly filled out her form, that she had difficulties in navigating the FMLA processes and that she was returned to work earlier than necessary, which prevented her injuries from healing properly. The Board notes that these matters relate to the handling of her compensation claims. The development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[16] The Board also notes that any requirements regarding fitness-for-duty examinations are administrative functions of the employer and, absent error or abuse, coverage will not be afforded.[17] The evidence before the Board does not establish any unreasonable actions by the employing establishment in these matters.

[13] *Peggy R. Lee*, 46 ECAB 527 (1995).

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

[15] *Karen K. Levene*, 54 ECAB ___ (Docket No. 02-25, issued July 2, 2003); *Penelope C. Owens*, 54 ECAB ___ (Docket No. 03-1078, issued July 7, 2003).

[16] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[17] *Andy J. Paloukos*, 54 ECAB ___ (Docket No. 02-1500, issued July 15, 2003).

Appellant also claimed that the employing establishment forced her to work beyond her physical restrictions by requiring her to drive to work in violation of her driving restriction. She also alleged that she was returned to full duty with regard to her accepted employment injury on May 1, 1998 despite pain in her shoulder. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[18] However, the employing establishment denied that appellant worked outside her work restrictions and appellant did not submit any corroborating evidence showing that she was required to do so or that her restrictions were violated. The Board also notes that with regard to her driving restriction, appellant did not provide any medical evidence to substantiate her claim that she had a driving restriction which was violated or that the employing establishment required her to drive to work. Appellant also claimed that job insecurity, financial insecurity, and fear of future unemployment, contributed to her condition. The employing establishment denied any efforts regarding "excessing" appellant. The Board also notes that these fears of future injury and reduction in force, like her feelings of job insecurity, are not compensable factors of employment.[19]

Appellant has also alleged that harassment by supervisors and clerk craft employees, while she was in a rehabilitation position, contributed to her claimed condition. She alleged that she took a temporary detail to escape the harassment. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[20] 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.[21] In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or craft clerk employees. Appellant alleged that her supervisors and the clerk craft employees engaged in actions, which she believed constituted harassment but she provided no corroborating evidence, such as specific witness statements, to establish that the statements were actually made or that the actions actually occurred in the manner alleged.

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[22]

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[18] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[19] *See Lillian Cutler*, 28 ECAB 125 (1976), *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *see also Joseph G. Cutrufello*, 46 ECAB 285 (1994) (fear of future injury is not a compensable factor of employment).

[20] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[21] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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

CONCLUSION

The Board finds therefore, that appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 31, 2005 is affirmed.

Issued: November 15, 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