United States Department of Labor
Employees' Compensation Appeals Board

MARILYN L. CURRIER, Appellant	)	
and	)	**Docket No. 05-990**
	)	**Issued: September 6, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Amherst, MA, Employer	)	

Appearances:
Katherine Smith, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 22, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated June 14, 2004, denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the June 14, 2004 decision.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her employment.

FACTUAL HISTORY

On August 22, 2001 appellant, then a 52-year-old custodian, filed an occupational disease claim alleging that she sustained stress, anxiety and depression due to a hostile work environment. She alleged that she did not know her job duties because she did not have a job description,[1] management supervision of custodians was inadequate and created a heavy

[1] Appellant alleged that management gave her only a handwritten list of duties.

workload for her, management discriminated in the assignment of work schedules, leave slips were not properly maintained, employees were allowed to work through lunch or eat lunch on breaks and leave the employing establishment during work hours without taking leave, able-bodied employees were permitted to park in handicap spaces, a key was given to an employee who did not need it on a daily basis and safety hazards were not corrected.[2]

Appellant alleged that she was exposed to loud, rude, sarcastic "outbursts" from custodian Bob Fregeau[3] and management took no action to correct his behavior.[4] She alleged that Mr. Fregeau rearranged and removed custodial equipment and locked doors for no reason,[5] left the floor-drying machine in improper and dangerous locations, failed to follow recycling procedures, blew rocks into lawn areas with a leaf blower, which created a danger when appellant mowed the grass, failed to post a supervisor's instruction addressed to both custodians and left her harassing notes. Appellant alleged that Mr. Fregeau harassed her by moving items such as rugs and trash containers from their usual locations and placing items in trash containers that did not belong there, such as pails of floor wax.

In a letter dated March 17, 2001 to appellant, Mr. Fregeau stated that she was not meeting her job responsibilities and also failed to perform his tasks on his days off, although he completed her tasks when she was off work. He stated that she told supervisors that he was not properly performing his job.

In an August 17, 2001 statement, supervisor Michele Joiner stated that she asked appellant to remove some empty mail trays and she responded that it was not her job. She asked appellant to do so anyway because the situation was a safety hazard.

Supervisor Joseph Garrity, Jr. stated that on August 17, 2001 appellant complained that Ms. Joiner assigned one of Mr. Fregeau's tasks to her. Ms. Joiner advised that she would speak to Mr. Fregeau but, in the meantime, appellant should perform the task. Appellant became upset and left work after requesting a claim form for her stress condition. Mr. Garrity also stated that appellant was concerned about the storage of a floor-drying machine and he corrected the problem. He instructed employees regarding proper disposal of trash after a complaint from appellant. She told Mr. Garrity that Mr. Fregeau used a leaf blower to clear debris from the sidewalk and might blow rocks into the grass, creating a hazard when she cut the grass. Mr. Garrity asked Mr. Fregeau to stop blowing debris into the grass.

[2] Between March and August 2001, appellant reported safety hazards that included a floor-drying machine left in a wet location and in a dump cart, cans of combustible materials improperly stored and a tripping hazard caused by a mop blocking a doorway. The safety reports indicated that management took corrective action.

[3] The custodial tasks at the employing establishment were performed by two full-time custodians.

[4] At the hearing held in this case, appellant testified that, when she talked to Mr. Fregeau about her concerns for how he was performing his custodial tasks, he yelled "Leave me alone," "Get out of my face," "I am not talking to you" and stormed out of the room.

[5] In a February 16, 2001 memorandum to appellant, Mr. Fregeau indicated that he locked the maintenance room door for security reasons because items were sometimes missing from the room.

Supervisor Joseph Sadlowski stated that on August 17, 2001 appellant requested a compensation claim form, stating that she was having a nervous breakdown because she was asked to perform Mr. Fregeau's work. He advised appellant that she should perform any task involving a safety hazard, regardless of who was responsible for that task.

Supervisor Fred Santana stated that when appellant began working at the employing establishment she was told her assigned duties and a copy of her duties was posted in the maintenance room. He indicated that appellant had difficulties working with other employees and that the custodians who had worked with her had transferred, resigned or simply refused to work with her. Mr. Santana stated that he attempted to resolve appellant's complaints but she was never satisfied. He denied that the actions of any employee affected her ability to carry out her assigned duties.

Postmaster Salvatore Vitagliano, who worked at the employing establishment from February 1999 to June 2001, stated that appellant had been dissatisfied with the job performance of four custodians. He met with appellant and the other custodians to resolve her complaints. Mr. Vitagliano requested a complete maintenance audit and an hourly duty assignment for the custodians. He stated that he addressed appellant's complaints, including investigating and correcting safety issues, but she was never satisfied. Mr. Vitagliano stated that he found insufficient evidence of harassment of appellant by other employees. He stated that no one was able to meet appellant's expectations and she felt coworkers were intentionally trying to upset her and create more work for her to do. He noted that appellant withdrew an Equal Employment Opportunity complaint after acknowledging that he was trying to resolve her problems.

Appellant submitted medical evidence in support of her claim.

By decision dated February 28, 2002, the Office denied appellant's claim on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable factor of employment.

Appellant requested an oral hearing that was held on March 15, 2004. She also submitted additional evidence.

Coworker John Volpe stated that appellant asked him to witness incidents when cans of flammable materials were improperly stored and access to the floor buffer was blocked by chairs and other items. He stated that one morning he saw a container of paper and magazines turned upside down and left next to the dumpster and it was clear to him that "this was not an accident." Mr. Volpe also saw a dumpster, reserved for trash in plastic bags, used to hold other items. Appellant told him that sometimes her equipment was missing. Mr. Volpe stated his opinion that someone was trying to upset appellant.

Postmaster Wayne Desroches stated that, while appellant was on leave for her stress condition, between August 2001 and May 2002, there were no complaints that Mr. Fregeau harassed any of the 70 other employees or deliberately created unsafe working conditions. He stated that appellant's claims that Mr. Fregeau or other employees hid equipment, placed equipment in unsafe locations and created a hostile work environment were unsubstantiated. Mr. Desroches stated that appellant expressed concerns about her working conditions that she

attributed to Mr. Fregeau and each incident was investigated and addressed. He noted that the employing establishment had an excellent safety record. Mr. Desroches stated that he had never seen an employee place electrical equipment in a wash basin, as appellant alleged and that an outside trash barrel was brought inside at night because of vandalism, not to create more work for appellant. He noted that a 2004 review of the custodial workload revealed that only one full-time and one part-time custodian were needed which indicated that the workload performed by appellant and Mr. Fregeau, both full-time employees, was not excessive and would not have caused appellant to fall behind in her tasks.

By decision dated June 14, 2004, the Office hearing representative affirmed the Office's February 28, 2002 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[6] provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to her condition; (2) 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.[7]

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*,[8] the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.[9] When an employee experiences emotional distress 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[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] Generally, actions of the employing establishment in administrative matters,

[6] 5 U.S.C. §§ 8101-8193.

[7] *George C. Clark*, 56 ECAB ___ (Docket No. 04-1573, issued November 30, 2004).

[8] 28 ECAB 125 (1976).

[9] *George C. Clark*, *supra* note 7.

[10] *Lillian Cutler*, *supra* note 8.

[11] *Id*.

unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[12] However, 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.[13]

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.[14] 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.[15]

ANALYSIS

Appellant alleged that management discriminated in the assignment of work schedules, did not properly maintain leave slips, allowed employees to work through lunch or eat lunch on breaks and to leave the employing establishment during work hours, allowed able-bodied employees to parked in handicap spaces and gave a key to an employee who did not need it on a daily basis. These allegations involve administrative or personnel actions that are not compensable under the Act absent evidence of error or abuse. The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing, through supporting evidence, that the incidents or actions complained of were unreasonable.[16] There is insufficient evidence to establish these allegations as factual. Appellant did not provide specific details such as dates, the individuals involved and what occurred. Therefore, these allegations are not deemed compensable factors of employment.

Regarding appellant's allegation that management erred or acted abusively in not providing her with a job description and giving her only a handwritten list of duties, Mr. Santana stated that when she began working at the employing establishment she was told her assigned duties and a copy of her duties was posted in the maintenance room. There is insufficient evidence that management erred or acted abusively in the manner in which it informed appellant of her job duties. Therefore, this allegation does not constitute a compensable factor of employment.

[12] *Michael L. Malone*, 46 ECAB 957 (1995).

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

[14] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[15] *Id.*

[16] *Janice I. Moore*, 53 ECAB 777 (2002).

Regarding appellant's allegation that management erred or acted abusively in its supervision of custodians, causing her to have a heavy workload, Mr. Vitagliano noted that appellant was dissatisfied with the job performance of all the other custodians. He met with appellant and the other custodians in an attempt to resolve appellant's complaints and he also requested a complete maintenance audit and an hourly duty assignment for the custodians. Mr. Vitagliano indicated that, despite his efforts to address appellant's complaints, including investigating and correcting safety deficiencies, she was never satisfied. Mr. Santana indicated that appellant had difficulties working with other employees and that he attempted to resolve her complaints but she was never satisfied. He denied that the actions of any employee affected her ability to carry out her assigned duties. Mr. Desroches noted that a 2004 review of the custodians' workload revealed that only one full-time and one part-time custodian were needed and this indicated that the workload performed by appellant and Mr. Fregeau, both full-time employees, was not excessive. Mr. Garrity stated that he took action to address appellant's concern about the storage of a floor-drying machine, instructed employees in the proper disposal of trash and asked Mr. Fregeau not to blow sidewalk debris into the grass because appellant feared being struck by rocks when she cut the grass. The record reflects that management made reasonable efforts to address appellant's concerns. There is insufficient evidence that the supervisors erred or acted abusively in supervising the custodians or other employees. Therefore, this allegation is not deemed a compensable employment factor.

Regarding the August 17, 2001 incident when Ms. Joiner assigned a task to appellant that was Mr. Fregeau's responsibility, Ms. Joiner indicated that appellant should perform the task because it involved a safety hazard. Mr. Sadlowski stated that on August 17, 2001 appellant alleged that she was having a nervous breakdown because she was asked to perform the task and he advised her that she should perform any task involving a safety hazard regardless of who was responsible for it. There is insufficient evidence that Ms. Joiner erred or acted abusively in assigning the task involving a safety matter, to appellant. Therefore, this allegation does not constitute a compensable factor of employment.

Appellant alleged that safety hazards reported to management were not corrected. Mr. Volpe stated that he had seen cans of flammable materials improperly stored and access to the floor buffer blocked. However, Mr. Vitagliano stated that he had investigated and corrected safety issues reported by appellant. Mr. Desroches noted that the employing establishment had an excellent safety record. There is insufficient evidence that management erred or acted abusively in its handling of safety matters. Therefore, this allegation does not constitute a compensable factor of employment

Regarding appellant's allegation that Mr. Fregeau verbally harassed her, the Board has held that, while verbal abuse may constitute a compensable factor of employment, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[17] 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 her regular duties, these could constitute a compensable employment factor.[18]

[17] *See Judy L. Kahn*, 53 ECAB 321 (2002).

[18] *Charles D. Edwards*, *supra* note 13.

However, for harassment and 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.[19] Appellant alleged that, when she talked to Mr. Fregeau about her concerns for the manner in which he was performing his job, he yelled "Leave me alone," "Get out of my face" or "I am not talking to you" and left the room. However, there is insufficient evidence that these verbal statements from Mr. Fregeau rose to the level of verbal harassment. Appellant acknowledged that she initiated the conversations with Mr. Fregeau. His responses, while suggesting that he and appellant did not get along and he did not care for her comments regarding his job performance, do not establish that he verbally harassed her. Therefore, this allegation is not deemed a compensable employment factor.

Appellant also alleged that Mr. Fregeau harassed her by rearranging and removing custodial equipment, locking doors, leaving the floor-drying machine in dangerous locations, failing to comply with recycling procedures, blowing rocks into the grass that she had to mow, failing to post a supervisor's instruction addressed to both custodians and leaving harassing notes for her. She also alleged that Mr. Fregeau or other employees harassed her by moving items from their usual locations and by improper disposal of trash. Mr. Volpe stated that one morning he saw a container of paper and magazines turned upside down and someone had improperly disposed of trash. He stated his opinion that someone was trying to upset appellant. However, Mr. Volpe provided no evidence to support his opinion that these incidents resulted from someone harassing appellant.

Management submitted statements regarding appellant's allegations of harassment. Mr. Desroches stated that, while appellant was on leave for her stress condition, there were no complaints that Mr. Fregeau harassed any of the other employees. He stated that appellant's claims that Mr. Fregeau or other employees hid equipment, placed equipment in unsafe locations and created a hostile work environment were unsubstantiated. Mr. Desroches stated that appellant regularly expressed concerns about her working conditions that she attributed to Mr. Fregeau and each incident was duly investigated by management. He stated that he had never seen an employee place electrical equipment in a wash basin and that an outside trash container was brought inside at night because of vandalism, not to harass appellant. Like Mr. Desroches, Mr. Vitagliano also found insufficient evidence of harassment of appellant by other employees. He indicated that no one was able to meet appellant's expectations and she had a perception that coworkers were intentionally trying to upset her and create more work for her to do. The Board finds that there is insufficient evidence that appellant was harassed by Mr. Fregeau or any other employee. Therefore, this allegation is not deemed a compensable factor of employment.

Appellant failed to establish that her emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied her claim.

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

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.[20]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2004 is affirmed.

Issued: September 6, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[20] Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Barbara J. Latham,* 53 ECAB 316 (2002); *Garry M. Carlo,* 47 ECAB 299 (1996).