United States Department of Labor
Employees' Compensation Appeals Board

SUNNY LEE, Appellant	)	
and	)	**Docket No. 06-346**
	)	**Issued: April 10, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Duluth, GA, Employer	)	

Appearances:
Wardell J. Gilbeaux, Jr., 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 28, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 30 and November 9, 2005 merit decisions, denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 9, 2004 appellant, then a 45-year-old craft and mail processing clerk, filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents and conditions at work. In a statement dated December 9, 2004, she alleged that between August 2003 and November 2004 her supervisor, Pamela Finley, discriminated against her on a regular basis. Appellant claimed that Ms. Finley continuously changed her day off, but

allowed other part-time flexible employees to keep their regular days off. She suggested that this discrimination was committed on the basis of race. Appellant asserted that she was the only part-time flexible employee who was disciplined for not complying with a new day-off schedule which was implemented without notice. She claimed that Ms. Finley would "shout and scream" whenever appellant attempted to explain her need to have certain days off in order to accompany her seriously ill son to medical appointments. Appellant claimed that on November 2, 2004 Ms. Finley subjected her to aggressive and demeaning behavior. She stated that she "screamed, harassed, threatened and treated me in a disparate manner."[1] Appellant later suggested that she was improperly issued a letter of warning on January 12, 2005 for failure to report an unsafe working condition in a timely manner.

Appellant submitted documents related to an Equal Employment Opportunity (EEO) complaint and a grievance she filed against the employing establishment in connection with her assertions regarding the handling of the day-off schedule, the events of November 2, 2004 and the January 12, 2005 letter of warning. In a statement dated November 24, 2004, Marcus Reese, a coworker, asserted that on an unspecified date, appellant came to him to discuss a given matter and that he then brought her to Ms. Finley "to explain her side of the story." Mr. Reese asserted that Ms. Finley "began to get upset about the situation" and indicated that in order to prevent "the situation from getting out of hand" he decided to separate appellant and Ms. Finley. He indicated that appellant became upset because she felt that she was being attacked for asking why she had to perform more than her fair share of work.

Appellant also submitted medical reports in which attending physicians determined that she was unable to work for various periods in late 2004 and early 2005. In several reports, Dr. John Mersereau, an attending Board-certified family practitioner, stated that appellant was disabled due to work-related stress.

In a statement received by the Office on December 27, 2004, Ms. Finley stated that on November 2, 2004 appellant came to her desk "yelling and screaming" and told her that she would not process the standard mail. Ms. Finley directed appellant to process the standard mail, as that was the only type of job available at that time and advised that she would attempt to find other tasks for appellant to perform.[2] Ms. Finley asserted that about an hour later appellant came to her to discuss the same subject and that "she began to talk loudly, waving her hands and throwing her hands up in the air." She advised appellant that she would be escorted out of the building if she continued her disruptive behavior and directed her to return to her work. Ms. Finley asserted that she treated appellant the same as all other part-time flexible employees with respect to any changes in day-off schedules and that she always adequately considered her concerns regarding this matter. In a statement received by the Office on December 27, 2004,

[1] Appellant stopped work from November 4 to 22, 2004.

[2] The record contains an unsigned November 20, 2004 statement in which a supervisor stated that an attempt was made to find another task for appellant to perform on November 2, 2004.

Tabitha Norman, a supervisor, stated that the only time appellant and the other part-time flexible employees had their days off changed by management was when they fell on holidays.[3]

By decision dated March 30, 2005, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.[4]

In August 2005, appellant requested reconsideration of the March 30, 2005 decision and submitted additional evidence in support of her claim. In an April 6, 2005 statement, Mr. Reese asserted that on November 2, 2004 Ms. Finley "screamed, yelled, dangerous, terrible, [sic] harassed and threatened" appellant. He stated that appellant was unable to work from November 3 to 21, 2004 due to the "stress and discondition [sic] work environment" caused by Ms. Finley. In an April 23, 2005 statement, Otis Hodge, a coworker, asserted that on November 2, 2004 he overheard when Ms. Finley "screamed, yelled, harassed and threatened" appellant. He indicated that appellant was unable to work from November 3 to 21, 2004 due to the "stress and uncomfortable work environment" caused by Ms. Finley. In a May 19, 2005 statement, Ben Patterson, a coworker, indicated that on November 22, 2004 a meeting was held regarding an incident between appellant and Ms. Finley and stated, "During the meeting [Ms. Finley] admitted that, if she was wrong, she apologizes for screaming at [appellant] and the situation would not happen again that she would [not] bother [appellant] again."[5]

By decision dated November 30, 2005, the Office conducted a merit review of appellant's claim and affirmed its March 30, 2005 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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[6] 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.[7]

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[3] The record contains other statements in which supervisors and coworkers generally discussed attendance at safety meetings, use of the office intercom and the rotation of tasks performed by postal clerks.

[4] In April 2005, appellant requested reconsideration of the Office's March 30, 2005 decision without submitting any additional evidence. By decision dated July 5, 2005, the Office denied her request for merit review. Appellant has not appealed the July 5, 2005 decision and the matter is not currently before the Board.

[5] Appellant also submitted a June 6, 2005 report of Dr. Mersereau.

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

A claimant 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.[8] This burden includes the submission of a detailed description of the employment factors or conditions which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.[9]

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.[10] 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.[11]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions and 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 between August 2003 and November 2004 her supervisor, Ms. Finley, discriminated against her on a regular basis. She claimed that Ms. Finley continuously changed her day off, but allowed other part-time flexible employees to keep their regular days off. She asserted that she was the only part-time flexible employee who was disciplined for not complying with a new day-off schedule. Appellant claimed that Ms. Finley would "shout and scream" at her whenever she attempted to explain her need to have certain days off in order to accompany her son to medical appointments. She also suggested discrimination in being issued a letter of warning on January 12, 2005 for failure to report an unsafe working condition in a timely manner. Appellant claimed that on November 2, 2004 Ms. Finley subjected her to aggressive and demeaning behavior and stated that Ms. Finley "screamed, harassed, threatened and treated me in a disparate manner."

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from

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

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

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

[11] *Id.*

appellant's performance of his regular duties, these could constitute employment factors.[12] 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.[13]

With respect to appellant's assertions regarding discrimination in handling day-off schedules and disciplinary actions, the employing establishment denied that appellant was subjected to such discrimination and she has not submitted sufficient evidence to establish that she was discriminated against by Ms. Finley or other supervisors, as alleged.[14] Ms. Finley asserted that she treated appellant the same as all other part-time flexible employees with respect to requested changes in day-off schedules and indicated that she adequately considered her concerns regarding this matter. Ms. Norman, another supervisor, also explained that discrimination did not occur by pointing out that the only time appellant and the other part-time flexible employees had their days off changed by management was when they fell on holidays. Appellant also alleged that Ms. Finley screamed at her whenever she attempted to explain her need to have certain days off in order to accompany her son to medical appointments. However, she did not submit any evidence, such as witness statements, to support this assertion. Appellant submitted documents related to an EEO complaint and a grievance she filed against the employing establishment in connection with all of these matters, but the record does not contain the result of any complaint or grievance showing that Ms. Finley or the employing establishment committed discrimination or harassment as alleged.

As noted above, appellant also claimed that she was verbally harassed by Ms. Finley on November 2, 2004. The Board has recognized the compensability of verbal abuse in certain circumstances, but this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[15] The record does contain witness statements which suggest that Ms. Finley raised her voice on November 2, 2004. For example, Mr. Reese, a coworker, asserted that on November 2, 2004 Ms. Finley "screamed, yelled, dangerous, terrible, [sic] harassed and threatened" appellant on that date and Mr. Hodge, another coworker, asserted that he overheard when Ms. Finley "screamed, yelled, harassed and threatened" appellant on that date.[16] However, these statements do not contain a specific account of what was actually said by either party. Consequently, they do not provide adequate content and context of the November 2, 2004 incident to establish that Ms. Finley was verbally abusive toward appellant.[17] The Board has

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

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

[14] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[15] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[16] Mr. Patterson, a coworker, asserted that during a November 22, 2004 meeting Ms. Finley admitted to "screaming" at appellant, but it does not appear that he was present during the November 2, 2004 incident.

[17] It should be noted that Ms. Finley testified that appellant came to her desk "yelling and screaming" on November 2, 2004 and became increasingly agitated as she attempted to have her return to her work duties. Although Ms. Finley acknowledged telling appellant that she would be removed if she continued her disruptive conduct, there is no indication that making such a statement was inappropriate under the circumstances.

held that the mere fact a supervisor or employee may raise her voice during the course of a conversation does not warrant a finding of verbal abuse.[18] Without a detailed description of the specific statements made during the conversation between appellant and Ms. Finley, the Board finds that this conversation does not constitute a compensable employment factor.[19]

For the foregoing reasons, 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.[20]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 9 and March 30, 2005 decisions are affirmed.

Issued: April 10, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[18] *Carolyn S. Philpott,* 51 ECAB 175, 179 (1999).

[19] *See Joe M. Hagewood*, 56 ECAB ___ (Docket No. 04-1290, issued April 26, 2005).

[20] 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, 502-03 (1992).