United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 06-1808**
	)	**Issued: December 29, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Albuquerque, NM, Employer	)	

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, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 2, 2006 appellant filed a timely appeal from the May 25, 2006 merit decision of the Office of Workers' Compensation Programs which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of her case.

ISSUE

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

FACTUAL HISTORY

On May 24, 2005 appellant, then a 47-year-old clerk, filed a claim for compensation alleging that her recurrent major depressive disorder was a result of her federal employment: "My work shift has been repeatedly changed causing me to lose sleep and I am having difficulty concentrating. I feel helpless and have lost my self-esteem. My stomach hurts and I have a general sense of ill health. I have also been working under restrictions which have not been

recognized by my employer." Appellant first became aware of her illness in April 2001. She first associated the illness with her employment in March 2004.

On August 8, 2005 the Office denied appellant's claim. Having received no supporting evidence, the Office could not find that events had occurred as alleged or that appellant's federal employment had caused any diagnosed condition.

The Office thereafter received a substantial amount of evidence from appellant. Much of this evidence related to the grievances and complaints she filed with the Equal Employment Opportunity (EEO) Commission and the Occupational Safety and Health Administration (OSHA). Appellant filed several grievances alleging improper holiday scheduling. She alleged that management harassed and discriminated against her and forced her to work outside her medical restrictions. Appellant alleged retaliation for prior EEO activity and discrimination based on race, national origin and sex. She filed notices of alleged safety or health hazards. As a door monitor, appellant complained that her desk was too close to equipment moving areas. Later, while performing the duties of a facility access controller, she alleged that a truck driver started driving through the gate without waiting for her to get out of the way. Appellant complained about lack of guard training, lack of protection and lack of insulation in the guard shack.

Appellant alleged that from March 28, 2002 until September 13, 2003 management changed her work schedule eight times, varying the length of her schedule and her scheduled days off. She alleged that management made her work seven straight days on one occasion and nine straight days on another, in violation of her limitation of five straight days.

Appellant submitted treatment notes showing her complaints of being stressed on the job. On September 26, 2002 a Dr. Bradly Keller diagnosed depressive disorder, not otherwise specified and chronic pain syndrome. He reported that appellant wanted the ability to call in at will to say she could not work because of stress. Appellant complained that the pressure at work was hard. She also submitted reports from a Dr. Lawrence Harris who diagnosed major depressive disorder.

Appellant requested an oral hearing before an Office hearing representative. She submitted statements from coworkers, who vouched for her character and who alleged that management was giving her a hard time. In a June 1, 2005 narrative statement, appellant alleged, among other things, that management treated her unfairly and differently from other employees and that she had filed several grievances for equal and fair treatment. At the hearing, which was held on April 4, 2006, appellant testified that she won two of her grievances and received back pay for schedule changes and working holidays. She explained that she had many other grievances pending. Asked whether there was anything else she wanted to share, appellant stated: "I'd like to be treated equally like every employee at the [employing establishment]." Appellant submitted an arbitrator's award granting the grievance of another employee. On April 27, 2006 she explained that she had been on an emotional rollercoaster since 2000 "with management throwing one thing after another at me." Appellant alleged, among other things, that management gave her no job accommodation for her injury, took away her weekends, forced her to work in the guard shack and then ignored her pleas for timely break relief and replacement.

In a May 25, 2006 decision, the Office hearing representative affirmed the denial of appellant's claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[2] An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.[3]

As a rule, a claimant's allegations alone are insufficient to establish a factual basis for an emotional condition claim.[4] 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.[5] The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[6]

ANALYSIS

Appellant has filed a claim that is generally not covered by workers' compensation. The thrust of her argument is that management treated her unfairly and that this unfair treatment caused her to develop a recurrent major depressive disorder. Because she attributes this emotional condition to management, to the actions of her supervisors, to various administrative and personnel matters, her claim, as a general rule, falls outside the scope of the Act.

As noted above, the Board has recognized an exception for administrative error or abuse, but appellant must do more than make allegations against management. Perceptions of unfair treatment, whether they belong to her or to her coworkers, are not enough. Appellant must

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[1] 5 U.S.C. § 8102(a).

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 42 ECAB 566 (1991), *reaffirming Thomas D. McEuen*, 41 ECAB 387 (1990).

[4] *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).

[5] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[6] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

submit real proof that management did in fact commit error or abuse against her. She has pursued her various complaints against management by filing a number of grievances. Although appellant testified at the April 4, 2006 hearing that she won two of these grievances, the record does not show this. There are no formal decisions finding management guilty of any of the charges appellant has made. Appellant has also filed complaints with the EEO Commission and OSHA, but again, there are no EEO Commission or OSHA decisions in the record finding that her complaints had any merit. Workers' compensation is not the appropriate forum to readjudicate these matters. The Board will not make a decision on appellant's grievances or other formal complaints. Should she receive a final grievance decision finding improper holiday scheduling, should the EEO Commission issue a final decision finding that management did in fact harass or discriminate against appellant, then she may submit that decision to the Office as evidence of administrative error or abuse. That kind of evidence, while not determinative, can help to establish a factual basis for a workers' compensation claim. Without that proof and without any other evidence that an actual event of error or abuse occurred, appellant has not demonstrated that her claim is one that can be covered by workers' compensation.

Appellant's allegation of changes in her work schedule deserves mention. It may be that management changed her work schedule a number of times from March 2002 to September 2003, a period of a year and a half. That alone, however, is not enough to bring her claim within the scope of workers' compensation. Appellant would have to submit proof that management changed her schedule in error, proof such as a grievance decision finding management in violation of some provision or otherwise at fault in the matter.[7] There is no proof, only allegations.

Irrespective of employer fault, the Board has held that a change in an employee's duty shift may, under certain circumstances, be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.[8] These cases, however, involve a fluctuating or rotating work schedule or a distinct reassignment from an existing shift, such as from a day shift to a night shift.[9] Such changes disrupt circadian rhythms and a claimant's ability to sleep. Before her injury, appellant began work at 3:30 p.m. with Saturday and Sunday off. Currently, she testified at the hearing, she began work at 5:30 p.m. Appellant stated that she once began work at 10:00 p.m., but for just two hours and that she also began work at 7:30 p.m. All these times fall within the same basic shift and do not establish a compensable factor of employment.[10] Appellant's frustration from not being allowed to work in a particular position or to hold a particular job, such as one that would allow her take Saturday and Sunday off, is not something that workers' compensation covers. Any emotional condition arising therefrom, is simply considered self-generated.[11]

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[7] Back pay received in settlement of a grievance is generally no proof of management fault.

[8] *E.g.*, *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

[9] *See generally Gloria Swanson*, 43 ECAB 161, 165-68 (1991) (briefly reviewing the various cases).

[10] *Id.*

[11] *Garry M. Carlo*, 47 ECAB 299 (1996).

Another major contention, which appellant noted on her claim form, concerns work restrictions. She alleged that management made her work seven straight days on one occasion and nine straight days on another, in violation of her restriction to work only five days in a row. For this argument to have any merit, the record would first have to show that a physician restricted her to no more than five consecutive days of work. A June 8, 2003 duty status report does state that appellant "may" work eight hours a day, five days a week, but this is by no means an expression of medical limitation. To the contrary, this is the customary language physicians use to convey that there are no restrictions on the number of hours or days a patient may work. It simply means that appellant may work full time.

Appellant submitted other medical evidence, but until she submits the proof she needs to establish error or abuse by management, no doctor's opinion adds much value to her case. Treatment notes reflect her complaints that she was stressed on the job, that she continued to be racially discriminated against and that management made little attempt to remedy the situation. These are merely appellant's complaints, not a physician's opinion on what caused her condition. Dr. Keller and Dr. Harris both diagnosed a depressive disorder, but they did not relate this condition to any specific factor of appellant's federal employment. If there is no proof of the administrative error or abuse appellant alleges, then a medical opinion relating her diagnosis to an unproved allegation carries no weight. She must first prove her allegation of administrative error or abuse to show that her claim falls within the scope of the Act.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. She attributes her emotional condition to management, which she alleges treated her unfairly, but appellant has submitted no proof of administrative error or abuse. Her claim is one that workers' compensation does not cover as a general rule.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board