

**United States Department of Labor
Employees' Compensation Appeals Board**

ANGELA B. FARRAR, Appellant)
and) Docket No. 06-133
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 15, 2006
Huntsville, AL, Employer)

)

Appearances:

Leslie J. Horton, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 24, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 29, 2005, denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the 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 August 1, 2003 appellant, a 39-year-old flat sorter machine operator, filed an occupational disease claim alleging an emotional condition due to factors of her federal

employment. In a narrative statement entitled "CA-35 Checklist for Occupational Disease," appellant made numerous allegations:

1. She stated that in May 2002, she felt insecure concerning her job due to rumors that her day position was threatened.
2. She claimed that being "forced back to the bondage of working nights" created stress, in that she went from working with 25 employees to working with 175 to 200 employees, had several supervisors telling her what to do and felt unsafe because management and fellow employees taunted her, drank alcohol on the premises, slept on the job, left the premises while on the clock, used profanity and told "sick and nasty jokes."
3. She claimed that "being an unassigned employee caused [her] to be pulled from all directions, working in areas that [were] not fully staffed."
4. Appellant stated that in May 17, 2003, she was given a new bid position for a day shift. She alleged that on June 5, 2003 her supervisor, Richard J. Clark, harassed her by questioning her "three times within 15 minutes," which affected her concentration and was very upsetting.
5. Appellant alleged that June 6, 2003 Mr. Clark informed her that her new position belonged to another employee and had erroneously been awarded to her. She claimed that she was very angry and upset and was unable to sleep and feared reporting to work. Appellant indicated that on June 7, 2003 she met with her manager, John Holliman and her shop steward. She stated that she told Mr. Holliman in a raised voice that taking the position from her was wrong and that she was tired of being treated like a nobody and of mental abuse, unfair treatment, conflicts amongst employees, humiliation and stress. Appellant indicated that during the four-hour discussion, she cried and listened to Mr. Holliman "while he discussed various options and ideas that could possibly work for everyone." She stated that she felt the employing establishment was engaged in an outright conspiracy against her when she discovered that the open position had been offered to all unassigned employees and that Mr. Holliman had "let the situation happen." Appellant claimed that following the discussion, she was despondent and that she awoke the next morning with chest pains.
6. Appellant indicated that "in retrospect," her 16 years at the employing establishment "involved mind control from management over employees." She claimed that she experienced many threats, an unsafe work environment (caused by management), unfair treatment and a "no care" attitude. She alleged that management harassed employees when they called in sick and "[took] weekends away."
7. Appellant claimed that the constant pressure of the conditions described above, as well as working an average of 12 hours per day, 6 days per week, caused her body to shut down, both mentally and physically. Appellant alleged that she has

been fearful of returning to work since being released from the hospital and is depressed and full of anger and self-doubt. She states that she has lost all trust in the Postal Service, "including the delivery of [her] mail." She complained that her sleep was interrupted and that she was constantly on guard and nervous. Appellant stated that she often thinks things are crawling on her or moving across the floor. She claims that the stress has caused high blood pressure, blurred vision, tingling sensation in her leg, migraine headaches and neck pain.

In a statement dated July 28, 2003, Gary Drake, a coworker, indicated, that the work environment had created significant stress for appellant. He opined that lack of staffing contributed to stress. He stated that the flat sorter machine employed 12 workers when it began in 1986, but that overtime staffing had decreased while mail volume and work requirements had increased. He also indicated that appellant was required to work 12 hours per day.

The employing establishment refuted appellant's allegations in a statement dated August 15, 2003, indicating that she was made an unassigned regular when her day shift position was abolished. The employing establishment further stated that appellant was awarded her second choice from a listing of jobs, after she chose a job that was placed on the list in error.

In an August 14, 2003 statement, Mr. Clark denied allegations of harassment. He indicated that he attempted to be helpful on June 6, 2003, when he became aware that appellant's desired position had already been awarded to another employee.

In a statement dated July 27, 2003, Clement Woods, a coworker, indicated that appellant was very angry when she learned that "another position was being taken from her." He reported appellant told him that management had been warned that two people could end up with the same position, but had "done nothing."

In a statement dated June 7, 2003, Ruth Crutcher, the shop steward, indicated that she was present at the June 7, 2003 meeting between appellant and Mr. Holliman. She stated that appellant appeared upset. She stated that Mr. Holliman attempted to rectify the problem created by the appellant's assignment to a job that was not actually available.

On August 6, 2003 Mr. Clark stated that on June 4, 2003, after returning from a leave of absence, appellant informed him that she had a bid assignment. After discovering that her position had already been awarded to another employee, Mr. Clark told appellant that she would have to talk with Human Resources in order to correct the problem. He indicated that appellant demanded a meeting with Mr. Holliman, which occurred on June 7, 2003 and lasted three hours.

Appellant submitted medical evidence, including a report from Dr. Anita Eason Jones, a Board-certified internist, reflecting treatment for chest pain; medical notes from Dr. Jones dated June 9 and 10 and August 17, 2003; various test results; unsigned treatment notes dated June 8 and October 9, 2003 from Huntsville Hospital System; and various patient records from Huntsville emergency room dated June 7 and 9, 2003. Appellant submitted several reports from Dr. Jane Roark, a treating physician. In a report dated June 16, 2003, Dr. Roark stated that appellant presented with a "two-week history of depressive symptoms following multiple losses." She opined that appellant suffered from a major depression, moderate without psychotic

features. Dr. Roark indicated that appellant reported that she was upset when she was placed in an unassigned position at work and felt helpless and hopeless relative to her job. On June 23, 2003 Dr. Roark expressed her concern that appellant's Equal Employment Opportunity (EEO) Commission complaint filed in September 2002 about a job action taken in September 2001 could impact her depressive condition. Medical evidence of record includes reports from Dr. Lawrence R. Maier, PhD., and Dr. Michael K. Johnson, a treating physician, reflecting their treatment of appellant for depression. In an August 29, 2003 report, Dr. Maier opined that appellant's depression was secondary to significant work-related stress "stemming from a promised new job classification gone sour." On January 9, 2004 Dr. Maier opined that appellant was unable to work.

By decision dated January 16, 2004, the Office denied appellant's claim on the grounds that appellant had failed to establish that her condition was due to factors of her federal employment.

On January 15, 2005 appellant requested reconsideration. She alleged that the employing establishment's elimination of her bid position effective September 21, 2002 was racially discriminatory. She claimed that when her position was eliminated, together with those of five coworkers, the only worker to receive an administrative detail was a Caucasian worker. Appellant stated that, although she was qualified and interested in the position, she was not considered. Appellant filed an Equal Employment Opportunity (EEO) complaint and was awarded a bid position on May 14, 2003. She reiterated her earlier claim that her supervisor informed her on June 5, 2003 that the bid position had been assigned to someone else.

Appellant submitted personnel documents, including a "no bid" position assignment dated May 14, 2003; appellant's prioritized request dated May 6, 2003; memorandum dated June 6, 2003 correcting appellant's May 14, 2003 assignment; and memorandum dated September 6, 2002 reposting appellant's position. Appellant submitted a grievance settlement dated August 18, 2003, which provided that appellant was awarded a bid assignment. The settlement also provided that the settlement was without prejudice to either party in any future case.

Appellant submitted a January 11, 2005 report, from Dr. Darren Gannuch, a Board-certified psychiatrist, indicating that he had treated appellant for depression on January 22, February 5 and 26, 2004. Dr. Gannuch stated that "One is never able to say for sure, however, I do believe that the difficulties she suffered at work as well as the death of her father played a part in her depression." In a December 17, 2004 report, Marvin S. Kalachman, PA-C, M.S. stated his impression that appellant was suffering from major depressive disorder, recurrent moderate and issues of abandonment related to her job and recent loss of her father.

On February 1, 2005 the Office denied appellant's request for reconsideration as untimely and failing to establish clear evidence of error. By decision dated June 8, 2005, the Board found that appellant's request was timely and remanded the case for review by the Office under the correct standard.¹

¹ Docket No. 05-752 (issued June 8, 2005).

By decision dated July 29, 2005, the Office denied modification of its January 16, 2004 decision, finding that appellant's allegations were either unsubstantiated or administrative in nature.

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 illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.² The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of a claimant's work or her fear and anxiety regarding her ability to carry out her duties.³ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁵

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, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁶ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁷ As a rule, allegations

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ See *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004). See also *Ronald K. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Barbara J. Latham*, 53 ECAB 316 (2002).

⁵ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ See *Charles D. Edwards*, *supra* note 5.

alone by a claimant are insufficient to establish a factual basis for an emotional condition claim, but rather, must be corroborated by the evidence.⁸

With regard to emotional claims arising under the Act, the term harassment, as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.⁹

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced, which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by her employment.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹²

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated July 29, 2005, the Office denied appellant's emotional condition claim on the grounds that she had not established any compensable factors of employment. The Board must, therefore, initially review whether these alleged incidents and conditions are covered employment factors under the terms of the Act.

With respect to appellant's allegation that she was treated abusively by employing establishment management when it refused her transfer to the day shift, the Board notes that appellant's reaction must be considered self-generated in that it resulted from her frustration in

⁸ *Charles E. McAndrews*, 55 ECAB ____ Docket No. 04-1257, issued September 10, 2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

⁹ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁰ *James E. Norris*, 52 ECAB 93 (1999).

¹¹ *See Charles D. Edwards*, *supra* note 5.

¹² *See Ronald K. Jablanski*, *supra* note 4; *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

not being permitted to work in a particular environment and, therefore, is not compensable under the Act.¹³

Appellant alleged that there was an unsafe work environment, she was treated unfairly, threatened and discriminated against. She also alleged that she felt unsafe because fellow employees taunted her, drank alcohol on the premises, slept on the job, left the premises while on the clock, used profanity and told “sick and nasty jokes.” To the extent that certain actions and incidents alleged as constituting harassment or disparate treatment by supervisors and coworkers are established as occurring and arising from appellant’s performance of her regular duties, these could constitute employment factors.¹⁴ 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.¹⁵ Appellant did not provide sufficient evidence to establish harassment by her coworkers.¹⁶ The Board finds that the actions of her supervisors did not constitute error or abuse. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

The record reflects that appellant filed an EEO complaint. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁷ Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO standards. Rather, the issue is whether the claimant has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁸

Regarding appellant’s allegations that she was treated abusively by her supervisor when she was assigned to work the night shift, was questioned three times within 15 minutes and was reprimanded for calling in sick, the Board has held that these 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.¹⁹ Although the assignment of training, the handling of disciplinary actions, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer rather than regular or specially assigned work duties of the employee.²⁰ Where disability results from

¹³ *Ernest J. Malagrida*, 51 ECAB 287 (2000).

¹⁴ *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁵ *Id.*

¹⁶ *Roger Williams*, 52 ECAB 468 (2001).

¹⁷ See *James E. Norris*, *supra* note 10. See also *Parley A. Clement*, 48 ECAB 302 (1997).

¹⁸ See *James E. Norris*, *supra* note 10. See also *Michael Ewanichak*, 48 ECAB 354 (1997).

¹⁹ See *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Roger Williams*, *supra* note 16; *Marguerite J. Toland*, *supra* note 14; *Dennis J. Balogh*, 52 ECAB 232 (2001).

²⁰ *Id.*

an employee's emotional reaction to certain administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, the disability does not fall within coverage of the Act.²¹ However, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.²² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment personal have acted reasonably.²³ Appellant has not shown that her managers acted abusively or erroneously with regard to the noted administrative matters.²⁴ However, the Board finds that appellant's claim that she was erroneously assigned to a position that had already been awarded to another employee is a compensable factor of employment. Appellant's allegation was corroborated by the union steward and her supervisor. Although the employing establishment contended that, it attempted to mitigate the mistake, it did not deny that it had occurred. The Board finds that appellant has established a compensable factor of employment.

With respect to appellant's allegations that her emotional condition was precipitated, in part, by working 12-hour days in an understaffed environment, the Board finds that this allegation relates to the performance of her assigned duties and were further substantiated by a coworker. Under the principles set forth in Cutler,²⁵ appellant has alleged a compensable factor of her federal employment as contributing to an emotional condition.²⁶

As appellant has established two compensable employment factors, the Office must base its decision on an analysis of the medical evidence.²⁷

CONCLUSION

The Board finds that appellant has identified compensable factors of employment with respect to her regular hours of employment and staffing conditions, as well as the erroneous job assignment. As appellant has implicated compensable employment factors, the Office must base its decision on an analysis of the medical evidence. As the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.²⁸ After further development as deemed necessary, the Office should issue an appropriate decision.

²¹ *Roger Williams*, *supra* note 16.

²² *Reco Roncaglione*, 52 ECAB 454 (2001).

²³ *James E. Norris*, *supra* note 10.

²⁴ *Dennis J. Balogh*, *supra* note 19.

²⁵ *Lillian Cutler*, *supra* note 3.

²⁶ *Phillip L. Barnes*, *supra* note 19; *Peter J. Smith*, 48 ECAB 453 (1997).

²⁷ *Phillip L. Barnes*, *supra* note 19; *Robert Bartlett*, 51 ECAB 664 (2000).

²⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 29, 2005 is set aside and remanded for further proceedings consistent with this decision.

Issued: March 15, 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