United States Department of Labor
Employees' Compensation Appeals Board

S.F., Appellant	)	
and	)	**Docket No. 06-1258**
	)	**Issued: November 1, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 27, 2006, which denied her emotional condition claim. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 28, 2005 appellant, then a 52-year-old postal clerk, filed an occupational disease claim for compensation, alleging that her emotional condition was aggravated by harassment at the employing establishment since her return to work on February 6, 2004. She alleged that she was denied employment and subject to "identity theft" by officials of the employing establishment. Appellant first became aware of her condition on February 26, 2004

and attributed it to her employment on March 17, 2004. In October 1997, appellant had applied for a job. When she was not selected for the position, she filed a complaint based on disability discrimination. Appellant prevailed in her claim on October 9, 2003 and the employing establishment's appeal was denied on February 5, 2004. The employing establishment was required to offer her the job she was denied in 1997.[1]

In a March 8, 2005 statement, appellant related that, since she returned to work on February 6, 2004, additional incidents had occurred that aggravated her emotional condition. She alleged that she was refused reasonable accommodation upon her return to work in February 2004. At a February 26, 2004 meeting with supervisors Kenneth Miller and Glenn Neiner, they used undue force in an attempt to get her to sign a document. Appellant was refused union representation during the meeting and, when Mr. Neiner came into the office, she viewed it as sexual harassment. She noted that Susan Reece, a coworker, stated that appellant was yelling and screaming at her supervisors during the February 26, 2004 meeting and that she was afraid of appellant. Appellant also alleged that, during a meeting on February 27, 2004, she was told not to come back into the building unless escorted. She alleged that supervisor Robert Bronder refused to track down her bid annual leave, refused to provide her with annual leave for 2004, made inappropriate remarks, was hostile, uncooperative and yelled at her about her leave. Appellant submitted a note from Dr. Margaret Reiland, a licensed clinical psychologist, stating that she could not work but was ordered to return to work or lose her benefits on March 31, 2004.

In May 2004, appellant alleged that her supervisors had falsified her time records. She alleged that the supervisors fraudulently falsified documents to show that she had supervisory training and experience from September 10, 2003 to February 5, 2004, although she did not work during that time. Appellant was given supervisory training on September 3 through November 26, 2004. During her training, she alleged that Supervisor Bronder made sexual remarks and jokes to others that she was "less than a person" and denied her overtime work. On November 26, 2004 Dr. Reiland took her off work because of her emotional condition. She returned to work on February 4, 2005, after an employing establishment physician, Dr. Jeremiah Cogan, found that she was not a danger to herself or others. Appellant changed her tour after returning to work because she did not want to work with Supervisor Bronder. She returned to her normal tour on March 11, 2005.

Dr. Christopher Ryan, a physiatrist, and Dr. Reiland, a licensed clinical psychologist, provided medical reports. On August 9, 2005 Dr. Ryan attributed appellant's recent worsening of her physical and psychological condition to the stress of working with Supervisor Bronder on August 11, 2005 Dr. Reiland concurred in this assessment. Both physicians opined that appellant's perception that her work restrictions would not be honored had significantly impacted her ability to recover from her physical and work-related injuries. They recommended that a scheduling change be made so that appellant would not remain under the supervision of Supervisor Bronder.

[1] Appellant had a prior claim, File Number 12-0183007, for an emotional injury involving these circumstances, which was denied based on insufficient medical evidence and is not the subject of the current appeal. *See Sharon D. Forde*, Docket No. 05-1235 (issued November 17, 2005).

On May 6, 2005 Arlette Elicerio, an injury compensation specialist, responded for the employing establishment. She denied appellant's allegations. Regarding appellant's bid for annual leave, Ms. Elicerio advised that appellant did not submit her bid before posting and, as a courtesy to appellant, Supervisor Bronder gave her a copy of the bid annual and told her that any dates that were not taken were available to her. Since appellant's bid was untimely submitted after the cut-off date under the union contract her seniority became junior, which was how Supervisor Bronder treated appellant's bid. She became upset when she was advised that he would not accommodate her untimely submission. Supervisor Bronder denied being hostile, uncooperative or making any inappropriate statements to appellant. With respect to the February 26, 2004 incident, Ms. Elicerio advised that both Supervisors Miller and Neiner denied the allegation that they used undue force in attempting to have appellant sign a document, that she was improperly denied union representation or otherwise treated improperly. Since the discussion did not involve discipline, appellant was told that she should contact a steward after the meeting. Mr. Neiner stated that Supervisor Miller asked him to witness the presentation of the Equal Employment Opportunity (EEO) decision to appellant. When Mr. Miller asked him to close the door for privacy, appellant stated that she would not stay in the room with two men without a steward. When Mr. Miller stated that he would leave the door open, appellant walked out and accused both supervisors of harassment. Both supervisors denied that appellant was obliged to sign the letter, as she had 15 days to respond. Mr. Miller stated that, when appellant refused to sign the letter, he requested that she make a written statement to that effect but she refused. Ms. Reese stated that she heard appellant yelling at the supervisors about not signing anything without a steward present. She heard Mr. Miller say that appellant did not have to sign the paper but that appellant needed to return it, whereupon appellant stated that she was not going to return it and that she was being harassed. Ms. Reese did not hear Mr. Miller or Mr. Neiner raise their voices and that appellant's yelling was very upsetting.

Ms. Elicerio related that, on February 26, 2004, Mr. Miller stated that appellant completed a Form CA-1 and was advised that, since she was filing a stress claim, she would have to be medically cleared to return to work. On February 27, 2004 appellant came to work with union steward Jackie Fleming and clocked in. Supervisor Miller informed her, consistent with the labor relation manual, that she would need an escort to enter the building or she would not be allowed in the building until medically cleared. The supervisors denied falsifying appellant's time records or fraudulently falsifying documents to show that she was given supervisory training and experience. Supervisor Roy Tapp indicated that appellant's time was put into the time keeping system in anticipation that she would be available. When she did not show up for work, this was adjusted. Supervisor Bronder was given timekeeping records to ensure that his employees were being paid correctly. When he noticed that appellant began appearing under supervisory pay and it was verified that she was not supervising, he deleted the "auto rings" to avoid a pay adjustment and to reflect her true work status. Ms. Elicerio noted that Supervisor Bronder refused appellant's request to work four hours of overtime over two holidays. Supervisor Bronder advised that under the contract employees who were unable to work eight hours were not scheduled to work holidays or overtime. Ms. Elicerio denied any harassment or retaliation and advised that the supervisors performed their duties in a professional manner. Copies of the supervisor and witness statement were provided.

By decision dated August 26, 2005, the Office denied the claim finding that appellant failed to establish a compensable factor of employment.

On September 1, 2005 appellant requested an oral hearing, which was held February 22, 2006. At the hearing, appellant noted that the February 26, 2004 meeting was about the EEO Commission decision. During the meeting she was given a job offer which she was ordered to sign or decline in writing. Appellant contended that this was an abuse of discretion and authority by her supervisor and requested a union steward. She alleged that the job offer was not consistent with the position determined by the EEO Commission decision and which was not physically capable of performing. Appellant alleged that the employing establishment was imposing an inappropriate administrative procedure. Dr. Reiland had released appellant to return to work on March 4, 2004, but stated that the employing establishment did not allow her to work until April 4, 2004, which she alleged was error and abuse. Appellant stated that she had sent her supervisor a facsimile on February 6, 2004 which the supervisor indicated he did not receive. She indicated that she was questioned why she requested leave when she only had eight hours of leave. Regarding her allegation of identify theft, appellant stated that her managers should not have input false information when she was not at work. Appellant further alleged that the employing establishment did not promptly comply with the EEO Commission decision to provide her training.

In a March 21, 2006 statement, appellant reiterated her allegations and disagreement with the denial of her claim. She submitted a final EEO Commission decision and materials relating to her claim against the employing establishment, together with additional medical evidence noting her period of disability. The employing establishment provided copies of memorandum and witness statements, which supported its May 6, 2005 response.

In an April 27, 2006 decision, a hearing representative affirmed the August 26, 2005 decision, finding that appellant did not establish any compensable employment factors.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2]

The Board has held that 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 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 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. The same result is reached when the emotional disability resulted from the employee's

[2] *Leslie C. Moore*, 52 ECAB 132 (2000).

emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work 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 reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, 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.[5] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.[6]

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.[7] To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[8] However, for harassment to give rise to a compensable disability under the Act there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[9] To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.[10]

ANALYSIS

Appellant attributed her emotional condition to the actions of her supervisors. The Office found that appellant failed to establish any compensable factors of employment.

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[3] *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Id.*

[5] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[6] *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

[7] *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[8] *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

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

[10] *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

Appellant alleged that the employing establishment refused to provide reasonable accommodation or adhere to the requirements of an EEO Commision decision after her return to work in February 2004. She discussed a February 26, 2004 meeting, where she was provided a job offer, which she alleged was an abuse of supervisory authority and which did not meet the requirements of the EEO Commision decision or her physical limitations. However, these are matters that are in the nature of administrative or personnel functions of the employing establishment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[11] An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor, the manner in which a supervisor exercises his supervisory discretion[12] or mere disagreement of supervisory or management action[13] as a general rule, fall outside the scope of coverage provided by the Act.

Appellant has not provided sufficient evidence to establish that either the February 26, 2004 meeting or the job offer were inappropriate. Thus, she has not established a compensable work factor in this regard. The evidence of record does not support appellant's allegations of harassment that, during the February 26, 2004 meeting, she was trapped in the room, denied union representation or forced to sign the job offer or sign a buck slip and give back the job offer. The employing establishment specifically refuted those allegations, noting that appellant had 15 days to respond to the job offer and that she could contact her union steward after the meeting since the discussion did not involve a discipline related matter. A coworker, Ms. Reese, advised that she overheard the discussion and stated that appellant was yelling at her supervisors. Appellant's perceptions over the manner in which the February 26, 2004 meeting was conducted fail to support a finding of harassment.[14]

Appellant also alleged that she was a victim of "identity theft" with respect to administrative matters pertaining to time records and training during a time when she was out of work due to another injury. Her supervisors explained that the reason for adjusting appellant's time records was to ensure their accuracy after appellant did not appear for supervisory training for which her attendance had been anticipated. Appellant has presented no credible evidence that the employing establishment acted unreasonably or committed error with regard to these managerial functions. She has failed to show that these actions of correcting time and attendance records and providing supervisory training at a later date constituted error or abuse.[15] Thus, they are not compensable.

[11] *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

[12] *Margaret J. Toland*, 52 ECAB 294 (2001).

[13] *Christophe Jolicoeur*, 49 ECAB 553 (1998).

[14] *See supra* note 10.

[15] *See Joe M. Hagewood*, 56 ECAB ___ (Docket No. 04-1290, issued April 26, 2005) (although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee).

Appellant's other allegations pertain mainly to administrative actions which include matters dealing with her untimely bid for annual leave, the necessity of an escort to enter the building on February 27, 2006 and a medical clearance on April 4, 2004; the denial of overtime work and changes in her tour. As noted previously, a claimant's reaction to administrative or personnel matters generally falls outside the scope of the Act.[16] 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.[17] With respect to appellant's bid for annual leave,[18] it was explained that her bid was submitted after the cut-off date but prior to the posting and was untimely. Therefore, her request became junior to others. There is no evidence of error or abuse on the part of the employing establishment and appellant has not submitted any probative evidence otherwise. As to the denial of leave, there is insufficient evidence to establish this allegation as factual or that any denial was unreasonable. Appellant was not specific as to dates such leave requests were denied. Therefore, it is not deemed a compensable employment factor. As to the necessity of appellant having an escort to enter the building on February 27, 2006 and a medical clearance to return to work on April 4, 2004, Ms. Elicerio explained that such precautions were consistent with its procedures since appellant had filed a stress claim. With respect to overtime, she advised that, since appellant was unable to work eight hours a day, under the contract she would not be scheduled to work holidays or overtime. There is no evidence of error or abuse on the part of her supervisors as to these allegations. Although appellant asserted that she changed her tour due to harassment by Mr. Bronder she has submitted insufficient evidence to establish a factual basis for her allegations. An employee's frustration from not being permitted to work in a particular environment is not compensable.[19] Appellant has provided insufficient evidence that employing establishment personnel erred or acted abusively in handling these administrative matters. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that she was harassed by her supervisors in that they were hostile and uncooperative, made inappropriate and demeaning remarks, yelled at her and used undue force in an attempt to get her to sign a document. She also alleged that they made sexual jokes and remarks. Appellant, however, failed to provide sufficient evidence or a description of specific incidents she believes constituted harassment.[20] Mere perceptions of harassment are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegation with probative and reliable evidence. Generally, stated assertions of dissatisfaction with a certain superior at work are not sufficient to support a claim for an emotional disability.[21] Additionally, management officials denied appellant's allegations and advised that appellant was

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

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

[18] *See Hagewood*, *supra* note 15, regarding leave matters not generally being compensable.

[19] *Roy E. Shotwell, Jr.*, 51 ECAB 656 (2000).

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

[21] *See Curtis Hall*, 45 ECAB 316 (1994).

treated professionally and with dignity. As appellant has submitted insufficient evidence to support her allegations, they are not established as factual. Therefore, these allegations are not deemed compensable employment factors.

For the foregoing reasons, the Board finds that 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.[22]

On appeal, appellant contends that the hearing representative did not review all the evidence as she had timely filed her response to the employing establishment's comments to the hearing transcript within the allotted time frame. However, the record indicates that the employing establishment comments and appellant's response to the comments were not received by the Office until after issuance of the hearing representative's April 27, 2006 decision.[23] The Board's jurisdiction over a case is limited to reviewing the evidence that was before the Office at the time of its final decision.[24] Thus, the Board may not consider this evidence on appeal.[25]

CONCLUSION

Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

[22] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See supra* note 16 at 468 at 474; *see supra* note 5 at 496, 502-03.

[23] *See* 20 C.F.R. § 10.617(e)-(f) regarding submittal of comments and additional evidence after a hearing.

[24] 20 C.F.R. § 501.2(c); *see Thomas L. Agee,* 56 ECAB ___ (Docket No. 05-335, issued April 19, 2005).

[25] *Id.* Appellant may submit this evidence and any other evidence she may have to the Office together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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