United States Department of Labor
Employees' Compensation Appeals Board

V.S., Appellant	)	
and	)	**Docket No. 06-2101**
	)	**Issued: March 21, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Huntington Beach, CA, Employer	)	

Appearances:
Appellant, pro se
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 September 13, 2006 appellant filed a timely appeal of a June 21, 2006 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of appellant's emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits.

ISSUE

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

FACTUAL HISTORY

On September 24, 2005 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim. On September 19, 2005 she experienced stress from harassment at the employing establishment related to the filing of other claims. Appellant alleged that this occurred in the course of her federal employment.[1] The employing establishment controverted the claim and

[1] Appellant referred to File No. 132039799. The record reflects that this claim for a date of injury of July 27, 2001 was accepted for adjustment disorder which had resolved.

alleged that appellant was not engaged in any employment related duties. She did not stop work. On September 8, 2005 appellant alleged that the employing establishment was prohibited by law from changing her schedule or from making her work a schedule for which she did not bid.

In a September 19, 2005 memorandum, Ron Adkisson, the acting manager of customer service, explained that on that date, at approximately 7:33 a.m., he was informed that appellant was on the premises of the employing establishment even though it was her day off. He explained that appellant was directed to leave the premises as it was her day off and he felt "very nervous about the situation" as he was "not sure why she would be here." Mr. Adkisson explained that, if appellant was "bold enough to disobey direct orders and show up on her day off what else would she be bold enough to do." He became concerned that appellant posed a threat to herself and others and informed appellant that he would call the police if she refused his order. After making several requests that she leave, with which she refused to comply, the postal police inspectors were notified. Mr. Adkisson noted that appellant had a tape recorder and he instructed her to turn it off which she refused. Appellant left the premises at approximately 9:30 a.m. Mr. Adkisson included a separate statement which reiterated the events which transpired on that date.[2] In a statement also dated September 19, 2005, Bernard Coleman, a supervisor, confirmed the statement of Mr. Adkisson. He added that this was the third time that appellant had come to the employing establishment on her day off and that appellant was "refusing to accept the F code as her day off." Joann Hinckey, a supervisor of customer service also provided a statement dated September 19, 2005, which confirmed the events which occurred on that date.

By letter dated November 4, 2005, the Office requested additional factual and medical evidence from appellant. She was advised that the Office was only considering the events of September 19, 2005 and her allegation of stress.

The Office subsequently received an October 27, 2005 interview of Mr. Adkisson, conducted by Gregory Nunnally, the postmaster. He determined that the reason appellant was coming in on her nonscheduled days was because on August 29, 2005 appellant was informed that her days were being changed from "Code A to Code F." Mr. Nunnally was informed by Mr. Adkisson that when appellant heard the news, she indicated that she would continue to work on her old scheduled days off. When appellant was informed that "she did not have a choice to change to Code F, [appellant] claimed that she was being harassed and stressed." The postmaster determined that appellant was changed to Code F, because, "a reserve carrier position had opened up and if nobody wanted it, the carrier with the least seniority would get that position." He explained that appellant had the least seniority and was placed in the position. Mr. Nunnally also confirmed the events of September 19, 2005, as described by Mr. Adkisson. In statements dated August 29 and 30, 2005, Mr. Adkisson described meetings that occurred with appellant and her union representative, after she was informed of her new schedule. He indicated that appellant became angry and refused to accept the change in her work schedule. In an interview, Javier Flores, appellant's immediate supervisor, confirmed that appellant was disappointed with her route being changed or to accept the change in her route. The employing establishment submitted copies of notices of removal dated January 30, 2002 for failure to follow

[2] The date appears to be a typographical error as the incident is described as having occurred on September 19, 2005.

instructions and October 14, 2005 for unauthorized use of a recording device together with a September 21, 2005 emergency placement in off-duty status. Appellant was placed off duty as a result of her "strange and unexplained behavior and to ensure the safety and well-being of yourself and the other employees…."

In a November 17, 2005 investigative memorandum, Mr. Nunnally described the events surrounding appellant's schedule change. He noted that appellant was escorted off the premises on three separate occasions after refusing to adhere to the change in her work schedule. Mr. Nunnally denied that the employing establishment was prohibited from changing the days off or rotation codes of the letter carriers.

In a letter dated November 14, 2005, appellant referred to numerous complaints against the employing establishment dating back to June 2000. As to her September 19, 2005 claim, she alleged that management had retaliated against her by changing her schedule "of the past 18 years." She alleged that changing her schedule was a deliberate attempt to harass and aggravate her and it was against the postal contract. Appellant alleged that her behavior on September 19, 2005 was the same as it had been for the past 18 years. She reported to work and was "escorted out of the building and punished."

The Office also received several documents from appellant, which included allegations of name calling, sexual harassment and verbal threats dating back to 1995. On November 29, 2005 appellant reiterated that the employing establishment was retaliating against her. The Office received copies of a January 30, 2002 notice of removal, a February 8, 2002 decision pertaining to benefits, July 26 and August 2, 2001 notices of suspension, a July 27, 2001 emergency placement in off-duty status report and rescission of emergency placement in off-duty status dated August 28, 2001. She submitted reports from Dr. Buford Gibson, Jr., a Board-certified psychiatrist, pertaining to events in 2000 and 2001, together with treatment notes dated September 19 to November 8, 2005.

By decision dated December 8, 2005, the Office denied appellant's claim. The Office found that appellant's work schedule was changed and that she went to the employing establishment on September 19, 2005, knowing it was her scheduled day off. The Office found that she was asked to leave by Mr. Adkisson and refused. She was subsequently escorted off the employing establishment premises. The Office found that there was no error or abuse in the actions taken at the employing establishment.

In a statement dated September 24, 2005, appellant indicated that Mr. Adkisson placed her in an off duty status without pay and sent her certified copies of paperwork pertaining to a vacancy for which she did not bid. She alleged that she was being harassed because she had filed a lawsuit regarding her daughter.

On December 14, 2005 appellant requested a hearing, which was held on April 18, 2006. She noted that she had worked for the employing establishment for over 18 years. When appellant filed her claim, she tried to file a Form CA-2, but the employing establishment refused to give her the proper form. She testified that the employing establishment retaliated against her because she filed a sexual harassment lawsuit. Appellant alleged that she was illegally terminated in 2001 and when she returned to work, she was placed in another office which was

also illegal. She alleged that she was harassed about scanning of packages and certified mail. Appellant also alleged that the employing establishment tried to change her schedule from schedule A to schedule F in 2004, but could not do so without a bid for the schedule. In January or February 2005, her supervisor threatened her if she did not start taking her days off.

The Office received additional information which included correspondence dated August 17, 2001 pertaining to a fitness-for-duty examination, a copy of the schedule changes enacted at the employing establishment commencing August 27, 2005, a copy of a vacancy announcement dated August 20, 2004, a copy of July 29, 2002 arbitration decision pertaining to actions that occurred in 2001, and documents from a psychologist pertaining to the period June 13 to July 15, 2000.

On May 17, 2006 the Office received a response from appellant regarding corrections to the transcript.

In a September 9, 2005 statement, Mr. Adkisson confirmed that on August 30, 2005 appellant was advised by Mr. Flores, Barbra Stickler, the union representative, and himself that her new day "would be on the F code for day's off." Her assignment was to begin on September 3, 2005. He also confirmed that the employing establishment did not refuse to provide appellant with the proper forms for filing a claim, that there had been no retaliation or harassment towards appellant, or that a lawsuit had been filed against him. Appellant was assigned a reserve position at the employing establishment under the contract and with assistance from the union. He noted that appellant's request for a CA-16 was denied because the time limit to request the form had expired. Her injury was not reported until October 15, 2005. The Office also received the police incident report pertaining to trespassing on August 30 and September 9, 2005.

In an undated statement, Chuck Tyma, a union steward, confirmed that appellant was assigned to a reserve position as a result of her seniority and that he advised her to work her proper schedule.

By decision dated June 21, 2006, the Office hearing representative affirmed the December 8, 2005 decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every 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 disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] On the other hand the disability is not covered where it results from such factors as an employee's fear

[3] 5 U.S.C. §§ 8101-8193.

of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[6]

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[7] 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Appellant made several allegations related to administrative or personnel matters. These allegations are unrelated to her regular or specially assigned work duties and do not generally fall within the coverage of the Act.[9] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse. In determining whether the employing establishment erred or acted abusively, the Board has examined whether management acted reasonably.[10]

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[4] *See Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991); *Lillian Cutler,* 28 ECAB 126 (1976).

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

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

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

[8] *Id.*

[9] An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis,* 50 ECAB 450 (1999).

[10] *See Richard J. Dube,* 42 ECAB 916, 920 (1991).

Appellant described a change in her schedule from schedule A to schedule F, and that she was told to go home on September 19, 2005 when she came to work at her old schedule. She was removed by the police when she did not comply with an order to leave the premises. Appellant was placed in a nonpay status and given notices of removal for refusal to follow orders and unlawful use of recording devices. However, she has not submitted any such evidence to show erroneous or abusive actions by management related to the change in her schedule or to the actions taken based on her refusal to follow orders or her use of a recorder.

As to the change in appellant's schedule, she alleged that it was unlawful to change her schedule without bidding upon it. In response, she took it upon herself to report to work under her old schedule. The employing establishment conducted an investigation and Mr. Nunnally, the postmaster, confirmed that appellant had been escorted off the employing establishment premises on three separate occasions after refusing to adhere to the change in her work schedule. Appellant was advised of the change of August 29, 2005 but refused to adhere to the change. The postmaster denied that the employing establishment was prohibited from changing the days off or rotation codes of carriers. In addition, he spoke with Mr. Adkisson, the acting manager of customer service, who confirmed that appellant's days were changed from "Code A to Code F," that she refused to accept the change and attempted to work on her old scheduled days off. Additionally, the postmaster explained that the reason for the change in schedule was an administrative decision, based in part on her seniority. He confirmed his findings with Mr. Flores, her immediate supervisor. On September 19, 2005 Mr. Adkisson noted appellant's refusal to adhere to her schedule and he became concerned about the "situation." After several requests that she leave, he had her removed from the premises. Mr. Adkisson noted that appellant had a tape recorder and refused his request to turn it off. Mr. Coleman and Ms. Hinckey also supported the events as described by Mr. Adkisson. Appellant has submitted insufficient evidence to establish that there was an error or abuse on the part of her supervisors or managers. The events of September 19, 2005 are not compensable factors of employment.

Regarding appellant's allegations that she was not given the proper claim form to file, Mr. Adkisson confirmed that the employing establishment did not refuse to provide appellant with the proper forms. She has not substantiated her allegations and failed to show error or abuse. This is not a compensable factor of employment.

With regard to placing appellant in a nonpay status, the notices of removal for failure to follow instructions and for unauthorized use of a recording device, the record establishes that appellant was disciplined based on her failure to follow instructions and to ensure the safety and well-being of herself and other employees. Reprimands, investigations and other disciplinary actions are administrative matters that are not covered under the Act, unless there is evidence of error or abuse.[11] The employing establishment noted that appellant refused to follow orders or comply with the change in her schedule. Mr. Adkisson became concerned for the safety of his employees and requested the removal of appellant from the premises. She did not comply with his instructions, despite several requests. The Board finds that there is no evidence of error or abuse.

[11] *Id.*

Regarding appellant's allegations that she was threatened if she did not take her days off, the Board finds that she has not submitted any evidence to support this allegation. The employing establishment denied that there was any form of retaliation or harassment towards appellant. For harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur.[12] A claimant's mere perception of harassment is not compensable.[13] The allegations of harassment must be substantiated by reliable and probative evidence.[14]

As appellant failed to establish a compensable factor of employment as the cause of her claimed emotional condition, the Office was not obligated to consider the medical evidence of record.[15]

CONCLUSION

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

[12] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[13] *Id.*

[14] *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

[15] *See Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2007
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