United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
	)	**Docket No. 07-433**
and	)	**Issued: May 15, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, 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 December 6, 2006 appellant filed a timely appeal from a September 27, 2006 merit decision of the Office of Workers' Compensation Programs 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 this case.

ISSUE

The issue is whether appellant has established that she sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On February 22, 2006 appellant, then a 47-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) assigned file number 02-22512655. On January 1, 2006 she first realized that her stress was due to harassment by James W. Betts, a supervisor, and his use of others to defile her character as a good worker. Appellant stopped work on February 22, 2006 and did not return. Appellant submitted a February 22, 2006 disability

certificate of Dr. Maria B. Del Vecchio, an internist, who opined that she was totally incapacitated.

On February 24, 2006 Alan M. Johnson, a supervisor, stated that on Wednesday, February 22, 2006 at approximately 6:00 a.m., appellant reported to work to be issued a predisciplinary interview. Mr. Johnson noted that Robert Parrish, a clerk shop steward, was present for an interview. Mr. Parrish stated that he was not designated a shop steward for the city division. Mr. Johnson related that appellant became very irritated and loud. At approximately 6:20 a.m., she reported a job-related stress injury. Mr. Johnson indicated that the disciplinary interview was never held. Appellant was escorted by Mr. Johnson to the medical unit at approximately 6:30 a.m. She was examined by Nurse Cox, who reported that appellant's vital signs were good. Appellant told Nurse Cox that she was being picked on by management. Mr. Johnson stated that on February 22, 2006 appellant saw her private physician, Dr. Del Vecchio, who diagnosed gastritis. Dr. Del Vecchio found that appellant was totally incapacitated until February 26, 2006.

In another memorandum dated February 24, 2006, Mr. Johnson stated that on February 22, 2006 appellant alleged that management was picking on her.

By letter dated August 24, 2006, the Office requested that the employing establishment respond to appellant's allegations. In a letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office addressed the factual and medical evidence she needed to submit to establish her claim.

In an August 31, 2006 letter, appellant alleged that Mr. Betts and his chosen supervisors harassed her, which was stressful. She stated that her claim was for her work-related carpal tunnel syndrome and not stress. Appellant contended that Mr. Betts harassed her about the way she held the mail and pitched with sore arms and hands. She contended that he had a personal vendetta against her after she filed a complaint against him with the Equal Employment Opportunity (EEO) Commission. Appellant also contended that Mr. Betts could not get her for attendance so he tried to get her based on her work performance. She stated that she went home in pain and was distressed about her arms and hands.

Appellant submitted medical evidence covering the period January 30, 2006 through May 27, 2007 regarding her bilateral carpal tunnel syndrome, cervical disc disorder and brachial neuritis. From January 30 through April 20, 2006 Darline Felix and Svetlana Rozenberg, physician's assistants, prescribed medication and right and left wrist splints for treatment of her carpal tunnel syndrome and x-rays of both hands. Disability certificates from Ms. Felix and Ms. Rozenberg addressed appellant's disability for work and her release to limited-duty work with physical restrictions.

In a September 11, 2006 email message, Mr. Betts denied appellant's allegations. He described her as a very combative person when it came to following instructions and performing her work duties. Mr. Betts noted that every time action was taken against appellant, she went through a chain of events either by filing EEO complaints or proclaiming that she had an accident. He contended that this was her way of trying to avoid the disciplinary actions initiated against her. Mr. Betts stated that every complaint appellant filed had been converted or was

settled as a mutual agreement. He denied that she was harassed. Appellant alleged harassment because her daily work activities were being observed and she was advised about her job performance. Mr. Betts noted that appellant received two letters for not performing her work duties in an effective manner which were settled.

The employing establishment submitted a June 10, 2005 agreement in settlement of appellant's grievance for being charged with being absent without leave (AWOL). It agreed to change 33 units of AWOL to leave without pay (LWOP). The employing establishment issued several disciplinary letters to appellant. On April 21, 2005 appellant was warned for failing to be in regular attendance. On May 18, 2005 she was suspended for seven days for failing to make proper clock rings and possessing a time badge. On August 11, 2005 appellant was warned for failing to follow official instructions. This letter of warning was modified to represent an official discussion based on an August 31, 2005 settlement of appellant's grievance. Appellant was warned on November 16, 2005 for failing to follow instructions in a timely manner. The November 22, 2005 settlement of appellant's grievance for this action reflects that the parties agreed to a six-month retention period from November 16, 2004 through May 16, 2005. On January 14, 2006 appellant was suspended for seven days for failing to perform her duties in an effective and conscientious manner. On March 8, 2006 she was suspended for 14 days for failing to perform her duties in an effective and conscientious manner. This suspension was rescinded by the employing establishment pursuant to a March 9, 2006 settlement agreement.

By decision dated September 27, 2006, the Office denied appellant's claim, finding that she did not sustain an emotional condition while in the performance of duty.[1] It found that she failed to submit sufficient evidence to establish that she was harassed at the employing establishment. In addition, the evidence of record failed to establish that the employing establishment committed error or abuse in taking disciplinary actions against her.

LEGAL PRECEDENT

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

[1] In the September 27, 2006 decision, the Office stated that, although appellant contended that her claim was for carpal tunnel syndrome and not an emotional condition, her February 22, 2006 CA-2 form only alleged that she was harassed by the employing establishment. The Office indicated that on April 6, 2006 appellant filed a CA-2 form assigned file number 02-2514498 for her carpal tunnel syndrome. It stated that it would only address her emotional condition claim in its decision.

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

[3] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[4] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[5] 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 under the Act.[6] When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[7] 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 under the Act.

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.[8] 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.[9]

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.[10] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[11]

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[4] 28 ECAB 125 (1976).

[5] 5 U.S.C. §§ 8101-8193.

[6] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[7] *Lillian Cutler, supra* note 4.

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

[9] *Id.*

[10] *Lillian Cutler, supra* note 4.

[11] *Michael L. Malone*, 46 ECAB 957 (1995).

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.[12]

ANALYSIS

Appellant attributes her emotional condition to being harassed by Mr. Betts and Mr. Johnson. She contends that Mr. Betts belittled her character as a good worker and that he harassed her about the way she held and pitched mail with her arms and hands. She alleged that Mr. Betts had a personal vendetta against her after she filed an EEO claim against him. Harassment when shown to have occurred may be considered a compensable factor of employment. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[13] Mr. Betts denied that appellant was harassed at work. He stated that she was a very combative person when it came to following instructions and performing her work duties as required, noting that she filed EEO complaints or proclaimed that she sustained an accident when disciplinary action was to be taken against her. Mr. Betts stated that disciplinary letters were issued because appellant did not perform her duties in an effective manner. Mr. Johnson stated that a disciplinary interview involving appellant did not take place because she became very irritate and loud. He related that she later claimed that she sustained a work-related emotional condition. Appellant did not submit any evidence such as witness statements from her coworkers, to substantiate her allegations of harassment. The Board, therefore, finds that appellant has not established a factual basis for her allegations of harassment by Mr. Betts and Mr. Johnson. Appellant did not provide any probative evidence that harassment occurred as alleged.[14] Therefore, she did not establish a compensable employment factor with respect to harassment.[15]

Appellant also attributed her emotional condition to disciplinary actions, including the issuance of letters of warning, suspension and being charged AWOL. The Board notes that the disciplinary actions involve an administrative function of appellant's supervisor and not the employee's regular or specially-assigned work duties.[16] The filing of a grievance related to these matters also does not pertain to her assigned work duties.[17] Mr. Betts stated that all of appellant's grievances had been either converted or settled. The record establishes that, based on

[12] *Charles D. Edwards*, 55 ECAB 258 (2004).

[13] *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).

[14] *James E. Norris*, 52 ECAB 93 (2000).

[15] *See Jamel A. White*, 54 ECAB 224 (2002).

[16] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[17] *Diane C. Bernard*, 45 ECAB 223 (1993).

settlement agreements, the employing establishment modified 33 units of AWOL hours charged to appellant to 33 units of LWOP. The August 11, 2005 letter of warning was reduced to an official discussion. Appellant received a six-month retention period regarding the November 16, 2005 letter of warning and her March 8, 2006 suspension was set aside. Although the employing establishment modified and rescinded certain disciplinary actions it took against appellant, the record does not contain a final decision finding that the employing establishment erred or acted abusively in handling these administrative matters. Appellant has not submitted evidence of error or abuse on behalf of the employing establishment with regard to issuance of disciplinary letters or charging her with being AWOL. The Board finds that appellant has failed to establish a compensable factor of employment.

CONCLUSION

As appellant has not identified any compensable factors of her employment, the Board finds that she has failed to establish that she sustained an emotional condition while in the performance of duty.[18]

ORDER

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

Issued: May 15, 2007
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

[18] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of her emotional condition, the medical evidence relating appellant's emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).