United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	
U.S. POSTAL SERVICE, MAIN POST OFFICE, Pomona, CA, Employer	)	**Docket No. 07-807** **Issued: September 7, 2007**

Appearances:
Thomas Martin, 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 February 1, 2007 appellant filed a timely appeal from an October 30, 2006 decision of the Office of Workers' Compensation Programs, denying her claim for an emotional condition. 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's claimed emotional condition is causally related to a compensable factor of her employment.

FACTUAL HISTORY

On March 12, 2004 appellant, then a 37-year-old letter carrier, filed an emotional condition claim alleging that she developed anxiety, depression and an adjustment disorder caused by harassment at work**.** She alleged that on May 30, 2000 Jesse Dominguez, a supervisor, told Carrier Sandy Chaffin that she must work additional overtime because of people that "can't even do their jobs" and pointed toward appellant. Appellant shouted and cursed at

Mr. Dominguez. She received a letter of warning that was subsequently reduced to an official discussion following Equal Employment Opportunity (EEO) mediation.[1] Management did not offer appellant a light-duty assignment between June 8 and July 3, 2003 due to her medical condition[2] although she was medically released to return to work.[3] On July 31, 2003 Postmaster Jerry Salas called a general meeting. He glanced at appellant and said, "I know we have a lot of light-duty carriers in this office, but for those employees that are working hard to get the mail out I would like to show my appreciation by serving you breakfast burritos."[4] Mr. Dominguez assigned appellant to work inside or sent her home when there was work available outside that was being assigned to part-time flexible and casual employees. On several occasions management assigned overtime work to other employees that appellant felt should be provided to her as part of her light-duty work.[5] Appellant was sent home from work in April 2003 to obtain medical evidence clarifying her ability to work inside. Mr. Salas told her that the only personal matters that should cause her stress would be a death or sudden financial problems and that he would terminate her if her work did not improve. On one occasion, when appellant returned from medical leave, Mr. Salas and Mr. Dominguez laughed and made comments while looking in appellant's direction. She alleged that she was given work which exceeded her medical restrictions. Appellant submitted medical evidence in support of her claim.

On April 22, 2004 the Office asked appellant to provide additional evidence regarding her allegations of harassment, including dates, locations, names of individuals involved and what occurred.

In a November 3, 2004 statement regarding an EEO complaint filed by appellant, Mr. Dominguez stated that in May 2003 he understood that appellant's medical restrictions included driving in a Long Life Vehicle (LLV) for up to two hours a day. There were no LLV's available to assign to her because they had been assigned to other routes where the vehicles were needed for five hours or more. It would have been inefficient to require a carrier to loan an LLV to appellant for two hours and then complete his or her route when appellant was finished with

[1] A July 28, 2000 mediation settlement agreement reduced the letter of warning to an official discussion. There was no finding of wrongdoing or discrimination by the employing establishment.

[2] Appellant developed work-related foot conditions, bilateral plantar fasciitis, bilateral plantar tendinitis and overuse syndrome in 1997. Dr. William C. Landrey, her attending podiatrist, provided work restrictions from 1997 to 2006. He advised in January 2006 that appellant stay off work pending foot surgery because she had experienced pain and swelling in her feet with previous returns to work, even part time. Dr. Landrey reviewed a modified job offer provided by the Office on January 26, 2006 and opined that appellant could perform this job.

[3] An August 19, 2003 decision of an employing establishment Dispute Resolution Team found that management violated the union contract by delaying appellant's return to work between June 5 and July 3, 2003. However, the Team noted that there are conflicting medical reports as to whether she was able to return to work on June 5, 2003.

[4] An October 15, 2003 decision of the Dispute Resolution Team found the comments of Mr. Salas to be inappropriate but did not rise to the level of a violation of the Joint Statement on Violence and Behavior in the Workplace.

[5] An August 25, 2003 decision of the Dispute Resolution Team declared an impasse because the case contained no interpretative issue under the union contract which was of general application. However, appellant and the union were advised of their right to appeal the grievance through arbitration.

the vehicle. When delivery work was not available to appellant, she was given the option of completing her shift by casing mail.

Don Ballard, a union steward, stated that on March 4, 2004 he witnessed a dispute between appellant and Supervisor Jaime Abner concerning her route assignment. Appellant complained that she was treated unfairly and was advised by Mr. Ballard to discuss the matter with Supervisor Renee Sarpee, who subsequently assigned appellant to the route she had requested. Mr. Ballard stated that he attended a July 8, 2004 meeting with Postmaster Art Cardenas, Ms. Sarpee and appellant. Appellant was upset that Mr. Dominguez "illegally" changed her assignment for the day.[6] She requested a transfer from Mr. Dominguez' section, where she worked one day a week. Appellant alleged that Mr. Dominguez sought to retaliate against her because she had filed an EEO claim against him and a compensation claim that involved him. Mr. Ballard indicated that appellant provided accounts of incidents of mistreatment by Mr. Dominguez.[7] Mr. Cardenas denied her request to stop working for Mr. Dominguez.

By decision dated January 24, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable factor of employment.

By letter postmarked February 25, 2005, appellant requested an oral hearing. On May 3, 2005 the Office denied her request for a hearing on the grounds that it was not timely submitted within 30 days of the January 24, 2005 decision. The Office exercised its discretion and determined that the issue in the case could be addressed equally well through a reconsideration request and the submission of additional evidence.

Appellant requested reconsideration. By decision dated November 7, 2005, the Office denied modification of the May 3, 2005 decision.

Appellant requested reconsideration. In a January 10, 2006 report, James F. Skalicky, Ph.D., a licensed clinical psychologist, diagnosed an acute anxiety disorder caused by her employment. He stated that appellant had experienced difficulty performing her work duties because of her accepted foot conditions which caused chronic pain and emotional distress. Dr. Skalicky found her to be totally disabled. By decision dated October 30, 2006, the Office denied modification of the November 7, 2005 decision.

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 an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional

[6] No details were provided regarding this allegation.

[7] Mr. Ballard did not provide details of these incidents.

reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[8] 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.[9]

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. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[10]

Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[11] The fact that a claimant has established compensable factors of employment does not establish entitlement to compensation. The employee must also submit rationalized medical opinion evidence establishing that he or she has an emotional condition that is causally related to the compensable employment factor.[12] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors identified by the claimant.[13]

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 work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.[14] 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.[15] 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.[16] As a rule, allegations

[8] 5 U.S.C. §§ 8101-8193.

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

[10] *Michael Thomas Plante,* 44 ECAB 510 (1993).

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

[12] *James W. Griffin,* 45 ECAB 774 (1994).

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

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

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

[16] *See Charles D. Edwards,* 55 ECAB 259 (2004).

alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[17]

ANALYSIS

The Board finds that appellant has not established a compensable factor of employment under the Act.

Several allegations made by appellant concern personnel or administrative matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.[18] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[19] Appellant alleged that on May 30, 2000 Mr. Dominguez told Ms. Chaffin that she must work additional overtime because of people that "can't even do their jobs" and pointed toward appellant. She responded by shouting and cursing at Mr. Dominguez. Appellant received a letter of warning that was subsequently reduced to an official discussion in a mediation settlement agreement. There was no finding of wrongdoing or discrimination by employing establishment personnel in the settlement agreement. The mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.[20] There is insufficient evidence of error or abuse in the handling of the letter of warning. Therefore, this allegation is not deemed a compensable factor of employment.

Appellant alleged that management did not offer her a light-duty assignment between June 8 and July 3, 2003 although she was medically released to return to work. The Dispute Resolution Team's August 19, 2003 decision found that management was at fault in delaying appellant's return to work and she was retroactively reimbursed for time lost from work. However, the decision noted that there were conflicting medical documents regarding appellant's ability to work. The evidence did not establish that appellant could return to work safely or that management refused to allow her to return to work once she was medically released for duty. As appellant had medical conditions requiring work limitations and there were conflicting medical documents regarding her capacity for work, management did not act unreasonably in waiting to return appellant to work until her medical situation was clarified. Therefore, this allegation is not deemed a compensable factor of employment.

Appellant alleged that Mr. Dominguez assigned her to work inside or sent her home when there was work available outside that was being assigned to other employees. Mr. Dominguez stated that appellant's medical restrictions included driving no more than two hours a day in an LLV. None of these vehicles was available for her to use because they had

[17] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[18] *Charles D. Edwards*, *supra* note 16.

[19] *Janice I. Moore*, 53 ECAB 777 (2002).

[20] *Michael Thomas Plante*, *supra* note 10.

been assigned to other routes where the vehicles were needed for five hours or more. It was deemed inefficient to require a carrier to loan his or her vehicle to appellant for two hours and then complete his or her route when appellant was done with the vehicle. When delivery work was not available to appellant she was given the option of completing her shift by casing mail. The assignment of work is an administrative function of a supervisor. There is insufficient evidence that Mr. Dominguez acted abusively in making work assignments. The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to this administrative matter. Thus, appellant has not established a compensable employment factor under the Act in this regard.

Appellant alleged that Ms. Abner treated her unfairly regarding a route assignment. Mr. Ballard stated that he witnessed this dispute. He advised her to discuss the matter with Ms. Sarpee who subsequently assigned appellant to the route she had requested. Appellant's complaint regarding her route assignment was resolved in her favor. However, the fact that two supervisors disagreed over a route assignment does not establish abuse. Therefore, this allegation is not deemed a compensable employment factor.

Appellant alleged that she was unfairly denied a transfer from Mr. Dominguez' section where she worked one day a week. However, the assignment of work locations is an administrative function of management. Mr. Ballard stated that appellant provided accounts of incidents of mistreatment by Mr. Dominguez. However, he did not provide any specific details of these alleged incidents of abuse. There is insufficient evidence of error or abuse in management's denial of appellant's request for a transfer. Therefore, this allegation is not deemed a compensable employment factor.

Appellant alleged that on July 31, 2003 Mr. Salas harassed her regarding her light-duty status. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.[21] Mr. Salas called a meeting, glanced at appellant and announced, "I know we have a lot of light-duty carriers in this office, but for those employees that are working hard to get the mail out I would like to show my appreciation by serving you breakfast burritos." The Dispute Resolution Team's decision found this remark to be inappropriate. However, Mr. Salas did not single out appellant by name. The evidence is insufficient to establish that Mr. Salas' comment was abusive. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. She must support her charges with probative and reliable evidence.[22] There is insufficient evidence to establish that Mr. Salas' remark rose to the level of abuse. Therefore, this allegation is not deemed a compensable employment factor.

The Board finds that certain allegations made by appellant are not established as factual. Appellant alleged that she was sent home from work in April 2003 to obtain medical evidence clarifying her ability to work inside. She submitted insufficient evidence to establish that this

[21] *Id.*

[22] *Cyndia R. Harrill*, 55 ECAB 522 (2004).

occurred. Even if this allegation was established to be factual, it would be an administrative matter requiring evidence of error or abuse to be a compensable factor. Appellant alleged that Mr. Salas told her that the only personal matters that should cause her stress would be a death or sudden financial problems and that he would terminate her if her work did not improve. She provided no evidence to support this allegation. Therefore, it cannot be deemed a compensable employment factor. Appellant alleged that on one occasion, when she returned from medical leave, Mr. Salas and Mr. Dominguez laughed and made comments while looking in appellant's direction. Even if this allegation was established as factual, she did not indicate what comments were made and how they were abusive.

Appellant alleged that she was given work which exceeded her medical restrictions. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity was substantiated by the record.[23] The record indicates that management assigned appellant to appropriate light-duty work due to her foot conditions. There is insufficient evidence that the employing establishment required appellant to perform work that was beyond her physical limitations. Therefore, this allegation is not deemed a compensable factor of employment.

For the foregoing reasons, appellant has not established a compensable employment factor under the Act. Therefore, she has not met his burden of proof in establishing that she sustained an emotional condition in the performance of duty.[24]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to compensable factors of employment.

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

[24] Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Barbara J. Latham,* 53 ECAB 316 (2002); *Garry M. Carlo,* 47 ECAB 299 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 30, 2006 is affirmed.

Issued: September 7, 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