

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

T.T., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Denver, CO, Employer**

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**Docket No. 08-1379
Issued: December 15, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 8, 2008 appellant filed a timely appeal from the September 25, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for compensation and a March 17, 2008 nonmerit decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether appellant sustained an emotional injury in the performance of duty on or about September 14, 2006; and (2) whether the Office properly denied her March 3, 2008 request for reconsideration.

FACTUAL HISTORY

On September 19, 2006 appellant, then a 43-year-old modified duty clerk filed a claim alleging that she sustained an emotional injury in the performance of duty: "The stressful and hostile treatment and attitude directed toward me by Kirk Bateman when I tried to talk to him concerning my change of schedule." She explained that she trained from June to August to have

a bid on Tour 2. When she was told she could not have the Tour 2 bid and would not receive reasonable accommodation,¹ she gave Mr. Bateman a request for a change of schedule for the rest of the year. Appellant alleged as follows:

“On the 14th of September, I saw Mr. Bateman by the scale, across from express mail room at approximately 8:30 p.m. I asked [Mr. Bateman] if he had heard anything about my request from the [T]our 2 MDO [manager distribution operations]. Mr. Bateman was very nasty and hostile in his response, stating that he was not going to approve my change of schedule for any time because I had one last year and took advantage of it. I said it was not true and then he turned and left.

“I had heard enough, I could not believe that I was being treated like this, I have been working where they had asked me to help out (express mail) where I was not able to perform a major part of the job which was heavy lifting but was asked to help out doing what I could throwing the mail I could lift or scan, yet here I am applying for a bid and passing all the tests and training and I can not have the job even though I could do all the functions of the job except the heavy lifting. Then being told I could not even have a change of schedule to go to the bid hours for even a little while.

“It is just too much dealing with the treatment that I am receiving and the very stressful and hostile work environment that management is creating.”

* * *

“Management’s actions and treatment of my situation caused it to be very stressful and traumatic. The incident with Mr. Bateman was the worse. He spoke to me and treated me like I was a criminal or just a person that was not good enough to speak to. [Mr. Bateman] made me feel like I was totally worthless.”

Appellant stopped work on September 14, 2006. She complained of tension headaches, loss of concentration, difficulty sleeping and loss of appetite. Appellant stated that she was always upset due to stress. She submitted a disability slip from her family practitioner, Dr. Martin D. Hannemann, who found her disabled for work secondary to stress and anxiety beginning September 14, 2006. Dr. Hannemann stated that her extreme stress reaction with anxiety and depression was “directly related to her feeling she had been ‘passed over’ thru a technicality after having mastered the material for the job.”

Mr. Bateman, lead manager distribution operations Tour III, responded:

“I met with [appellant] twice. The first time I told her that she needed to submit medical documentation because she was asking for a six[-]month change of schedule (COS). The second time I saw her I explained that Cecilia Lopez had granted her a COS to Tour 2 for [two] weeks but that she had taken advantage of

¹ Appellant has permanent restrictions from a previous work injury. OWCP File No. xxxxxx004.

it and stayed on Tour 2 for a year. [Appellant] told Cecilia that if the supervisor did not notice that she was missing what difference did it make. I told her that I was not going to grant her this COS because she had not provided medical and had taken advantage of the situation in the past.”

* * *

“I told [appellant] why I was not approving her COS. She became agitated. [Appellant] was not treated ‘as a criminal.’ I left because I had no desire to have a possible conflict.”

* * *

“I explained to her why I was disapproving her COS. [Appellant] did not get the answer that she wanted. She was upset but she had neither provided the requested medical documentation and she had taken advantage in the past when Cecilia Lopez had granted her a COS.”

In a decision dated February 9, 2007, the Office denied appellant’s claim for compensation. It found that she had not established a compensable factor of employment. The Office noted that determinations on scheduling of personnel are a management or administrative function, and reactions to those decisions are not compensable. Appellant did not provide sufficient evidence to show abuse or error in management’s decision and her allegations of a hostile attitude expressed by Mr. Bateman were not established.

Appellant requested an oral hearing before an Office hearing representative, which was held on June 19, 2007. Following the hearing, the Office received additional evidence. Charmaine A. Ehrenshaft, District Reasonable Accommodation Committee Coordinator, confirmed that appellant had passed her training; however, awarding her the bid was dependent on whether she was able to perform the full duties of the position. She stated that the Committee was unable to come up with a way to reasonably accommodate appellant’s restriction without taking away the core functions of the job. Moreover, appellant did not provide documentation from her physician that she would be able to perform the full functions of the job within six months of her bid. Appellant submitted documents relating to an Equal Employment Opportunity complaint, including her COS request, which showed that she was asking for a COS from September 1, 2006 through March 3, 2007. A mail handler stated that he saw appellant in an upset mood and with tears in her eyes on September 14, 2006. The supervisor of distribution operations (acting) Tour III stated that appellant approached her on September 14, 2006 to ask if she could go home because she was upset and did not get the bid that she just qualified for. The supervisor stated that appellant became upset and started to cry when she related that Mr. Bateman refused her COS because of her history with a past COS.

In a decision dated September 25, 2007, the Office hearing representative affirmed the denial of compensation benefits. The hearing representative found that appellant failed to establish a compensable factor of employment.

On March 3, 2008 appellant requested reconsideration. She argued that she was submitting documentation clearly showing that the employing establishment considered her

condition to be job related.² Appellant submitted copies of claim forms and a copy of the narrative statement she initially submitted to support her claim.

In a March 17, 2008 decision, the Office denied appellant's reconsideration request finding that no relevant or pertinent evidence was submitted.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for disability of an employee resulting from personal injury sustained while in the performance of duty.³ When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her 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 resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation 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

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁵ The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁶ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.⁷ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to

² On March 31, 2008 the Office received a duty status report, on which a supervisor described how the injury occurred as "on the job stress."

³ 5 U.S.C. § 8102(a).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

⁶ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

⁷ *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).

establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.⁸

ANALYSIS -- ISSUE 1

Appellant attribute her emotional condition to certain administrative denials: the denial of a bid on Tour 2, the denial of reasonable accommodation and the denial of her COS request. As a general rule, such administrative actions are not covered by workers' compensation. There is an exception, however, where the evidence establishes error or abuse by the employer in an administrative or personnel matter. Appellant has not submitted probative evidence of such. She explained that she worked very hard in training to pass the tests for the scheme and the window training, but she did not establish that her manager's erroneously denied her the bid. Ms. Ehrenshaft, District Reasonable Accommodation Committee Coordinator, acknowledged that appellant passed her training but awarding the bid was dependent on whether she was able to perform the full duties of the position. The Committee was unable to come up with a way to reasonably accommodate appellant's physical restrictions without taking away the core functions of the job. Further, appellant did not provide documentation from her physician that she would be able to perform the full functions of the job within six months of her bid. The factual evidence fails to establish that the employer committed administrative error or abuse in the matter.

Appellant did not submit evidence that Mr. Bateman committed error or abuse in denying her COS request. Mr. Bateman told her that he was not going to grant her COS request because she had not provided the medical documentation required and because she had taken advantage of the situation in the past. Appellant alleged that Mr. Bateman became very nasty and hostile in his response to her on September 14, 2006. However, she submitted no evidence to confirm this. Mr. Bateman countered that it was appellant who became agitated because she did not get the answer she wanted. He denied treating her in an abusive manner and stated that he left the encounter because he had no desire to have a possible conflict. In the absence of factual evidence supporting her account of events and rebutting Mr. Bateman's description of what happened on September 14, 2006, the Board finds that appellant has not met her burden of proof to establish error or abuse by Mr. Bateman in his treatment of her.⁹

The witness statement that appellant became upset on September 14, 2006 does not show why she was upset. The supervisor's statement -- that appellant became emotional when she asked to go home on September 14, 2006 because Mr. Bateman had denied her COS request -- does not establish that Mr. Bateman mistreated appellant in denying her request. This evidence is consistent with appellant's disappointment in not getting the bid or reasonable accommodation or COS. The Board has held that denials of a request for a different job or transfer are not

⁸ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

⁹ Appellant has pursued her allegations through an EEO complaint, but the record contains no final decision finding error or abuse by the employer in any of the incidents alleged.

compensable factors of employment as they do not involve the employee's ability to perform her assigned duties but rather constitute a desire to work in a different position.¹⁰

Because the evidence does not establish error or abuse by the employer, appellant's claim does not fall within the exception to the general rule that emotional reactions to administrative or personnel matters are not compensable. The Board will affirm the hearing representative's September 25, 2007 decision denying coverage.

LEGAL PRECEDENT -- ISSUE 2

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹¹ The employee shall exercise this right through a request to the District Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹²

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹³

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹⁴ A timely request for reconsideration may be granted if it determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

ANALYSIS -- ISSUE 2

Appellant timely filed her March 3, 2008 request for reconsideration within one year of the hearing representative's September 25, 2007 decision denying compensation. The question for determination, therefore, is whether this request meets at least one of the three standards for obtaining a merit review of her case.

¹⁰ *Brian H. Derrick*, 51 ECAB 417, 422 (2000).

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.605 (1999).

¹³ *Id.* at § 10.606.

¹⁴ *Id.* at § 10.607(a).

¹⁵ *Id.* at § 10.608.

Appellant argued that she was submitting documentation clearly showing that the employing establishment considered her condition to be job related. But no such documentation accompanied her request for reconsideration. If appellant meant a duty status report on which her supervisor described how the injury occurred as “on the job stress,” this is simply a repetition of her claim. The Board has held that not every stress in the workplace is compensable. Appellant submitted copies of claim forms and a copy of the narrative statement she initially submitted in support of her claim, but this documentation is irrelevant. It does not address the reason the Office denied her claim. Because appellant’s request for reconsideration does not meet at least one of the three standards for obtaining a merit review of her case, the Board will affirm the Office’s March 17, 2008 decision denying her request.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional injury in the performance of duty on or about September 14, 2006. The Board also finds that the Office properly denied appellant’s March 3, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2008 and September 25, 2007 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: December 15, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

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

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