United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 07-1057**
	)	**Issued: June 11, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Hillsborough, NC, Employer	)	

Appearances:
Dean Albrecht, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 12, 2007 appellant filed a time appeal from a January 30, 2007 decision of the Office of Workers' Compensation Programs which affirmed the denial of her emotional condition claim and her request to subpoena witnesses. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office abused its discretion in denying her request to subpoena witnesses.

FACTUAL HISTORY

On September 1, 2004 appellant, then a 38-year-old rural letter carrier, filed a claim alleging an emotional condition which she attributed to her federal employment. She contended that Lori Warren, her supervisor, treated her differently than her coworkers, such as requiring her to count her route. Appellant alleged that her postal route was overburdened and that

Ms. Warren denied her request for training or to pay her for time spent learning a new route. She stated that a copy of postal regulations bearing her name was posted on her case, indicating that she was not entitled to payment for training. Ms. Warren denied her requests for leave without pay (LWOP) and failed to provide credit for time spent delivering mail on her route. On August 31, 2004 Ms. Warren failed to submit the proper forms reflecting modifications to appellant's route and when appellant asked about the form, she stated that she was not going to do it.[1] Appellant contended that she did not get proper credit for time spent making her deliveries, modifying her edit books or in attending safety talks. By August 31, 2004, she realized that stress at work resulted in her health problems. Appellant alleged that she was being singled out. On September 21, 2004 she again requested that Ms. Warren submit forms reflecting a gain of four mailboxes since June, 2004.

On September 9, 2004 Ms. Warren denied appellant's allegations that she had been singled out or treated in a manner different than other coworkers. Upon her arrival at the postal station, she found the work to be disorganized and the work habits of some individuals to be unsatisfactory. Ms. Warren instituted procedures which were unpopular, but necessary to make the office more productive and in compliance with postal rules. She advised appellant that she was not entitled to receive training for the route on which she had bid. Ms. Warren noted that a substitute carrier who had previously been compensated for training, received it prior to her arrival at the postal station. Ms. Warren cancelled the training scheduled for appellant before it occurred, noting that the employing establishment was not obligated to pay appellant for it. She submitted all edit books as required and denied appellant's allegation that she had erased her edit book or placed appellant's name on a copy of postal regulations. Ms. Warren stated that appellant had not followed proper procedures for grieving any items not credited during her mail counts and that she had granted LWOP on several occasions.[2]

The record reflects that appellant filed a grievance on September 1, 2004 based on Ms. Warren failing to authorize training for a new route, requiring carriers to separate mail into six batches, and for making numerous changes at the employing establishment. In support of her claim, appellant submitted numerous statements from coworkers, noting their disagreement with changes made by Ms. Warren in office procedures. On September 13, 2004 appellant responded to Ms. Warren's statement, reiterating her allegations of disparate treatment and not being compensated for extra time associated with her postal route. She denied ever pointing her finger at Ms. Warren and noted that she had repeatedly asked her supervisor to complete the form

[1] Appellant submitted records pertaining to medical treatment for her emotional condition commencing May 12, 2004. She was seen by Dr. Chris O'Conner, a Board-certified internist, who advised that appellant would be off work due to stress-induced heart arrhythmias. Dr. Lisa-Fail Simone Thomas, an attending physician, diagnosed depression aggravated by conflict in the workplace. Dr. Karl W. Stevenson, a psychiatrist, advised on September 30, 2004 that appellant was disabled until October 20, 2004.

[2] On September 7, 2004 Tammy Baldwin, a supervisor, denied that appellant has ever been singled out or harassed. She described a meeting at which appellant became extremely loud and had pointed a finger at Ms. Warren. Ms. Baldwin stated that, on August 31, 2004, appellant became upset during a discussion on route adjustments when she was informed by Ms. Warren that her 4002 form could not be sent in the following Friday.

necessary to qualify for a 40K route, entitling her to Saturdays off.[3] In an affidavit of November 3, 2004, appellant detailed 36 allegations pertaining to actions taken by Ms. Warren upon her arrival at the Hillsborough facility on March 22, 2004. She also submitted additional statements from coworkers, noting that Ms. Warren had required overtime work for which they were not paid.

In a March 25, 2005 statement of accepted facts, the Office found that appellant was required to perform mail counts and edits, spent personal time in spring of 2004 fixing an edit book and counting cells so that her mail labels would be correct, Ms. Warren erased an edit book, changed the size of cells and threw away labels, appellant did not receive training on her new route after it had been approved by previous management, and she was required to stay 20 minutes late casing mail on one occasion. The Office did not accept appellant's allegations of harassment or disparate treatment by Ms. Warren.

By decision dated March 25, 2005, the Office denied appellant's claim on the grounds that appellant had failed to establish that she was injured in the performance of duty. The Office accepted that she was required to perform extra work, but determined that it was a one-time incident that occurred before her alleged onset.

On April 7, 2005 appellant requested an oral hearing. By letter dated June 13, 2005, appellant requested that witness subpoenas be issued to 23 identified individuals. By decision dated November 9, 2005, the Branch of Hearings and Review denied appellant's subpoena request as it was made more than 30 days after her request for an oral hearing. The Office noted that appellant failed to explain why statements could not be obtained from the individuals.

Appellant submitted a November 15, 2005 report from Dr. O'Conner, who opined that stress at work might be responsible for her heart palpitations. Reports from Dr. Walter E. Afield, a Board-certified neuropathologist, dated May through November 2005 reflected his belief that appellant's major depressive disorder was causally related to her employment. In a November 18, 2005 report, Dr. Stevenson opined that appellant's post-traumatic stress disorder resulted from factors of employment, including the requirement that she work longer hours, service additional boxes and drive extra miles without additional pay.

At the oral hearing held on November 22, 2005, appellant testified that she became stressed by the demands of her duties as a carrier. She took her edit books home because she did not have time during the regular workday to get her job done. Appellant worked under a tight deadline as a carrier and that, if she did not finish her route in time to meet the 5:00 p.m. truck at the station, she was required to drive the mail to Greensboro, which was a two-hour round trip. Paul Fawcette, a coworker, testified that Ms. Warren told appellant to "shut up" at a stand up meeting. He indicated that Ms. Warren initially told the carriers to separate the mail into six bins; however, she received information that this was improper and reversed her decision, requiring that the mail be separated into only two bins. Mr. Fawcette and Robert Bachman testified that rural carriers were required to return to the office by 5:00 p.m. to meet the

[3] Appellant submitted additional statements from coworkers, noting that mailboxes on appellant's route had been moved in August 2004, increasing her line of travel by 412 linear feet and which was not reflected in her route adjustment.

Greensboro truck. If a carrier had not completed his route by that time, he was required to return the mail by 5:00 p.m., and then go back out to finish the route. Appellant contended that Ms. Warren had withheld her Form 4003 since June 2004 and the mileage and boxes she added to the route were not counted. She stated that the additional mileage and boxes would have been enough to elevate her route to a 40K route.

The record contains a September 22, 2005 affidavit from appellant in support of a grievance, alleging that the employing establishment performed an improper route adjustment in November 2004, by failing to count her route. The record contains a September 30, 2005 decision of the National Labor Relations Board (NLRB) dismissing appellant's charge. Pursuant to the decision, an independent investigation revealed that a proper route adjustment had been conducted; that, as of the date of the decision, appellant's route classification remained designated at 43J; and that she had failed to furnish the employing establishment with the proper form requesting that her route be counted. On October 4, 2005 appellant filed an appeal of the September 30, 2005 dismissal.

By decision dated September 15, 2006, the Office hearing representative affirmed the denial of appellant's claim and the denial of appellant's request for witness subpoenas.

On November 4, 2006 appellant, through her representative, requested reconsideration, contending that appellant's allegations relating to her regular work duties and special assignments were compensable factors of employment. She submitted numerous witness statements reiterating previous allegations.[4]

By decision dated January 30, 2007, the Office denied modification of its January 31, 2006 decision, finding that, all alleged actions and statements related to administrative matters, and that there was no evidence of error or abuse.

LEGAL PRECEDENT -- ISSUE 1

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 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 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. 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.[5]

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

[4] Appellant submitted statements from Robert Crabtree, Paul Fawcette, Thomas Chandler, Robert Taylor, Robert Bachman; Lillian Burton; Linda Taylor; James Kenyon; V.J. Dasmuth and Jim Garland.

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

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.[6] Assignment of work is an administrative function of the employer,[7] as is an investigation by the employing establishment.[8]

Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[9] 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.[10] 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 appellant.[11]

ANALYSIS -- ISSUE 1

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

Appellant attributed her emotional condition principally to the actions of her supervisors. As noted, workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.[12] The Board finds that appellant's allegations that the employing establishment engaged in improper actions by denying her request for training, denying LWOP, erasing her edit book, throwing away certain mail labels, failing to submit 4003 forms, informing appellant of postal regulations regarding compensation for training, regulating the distribution of mail, and failing to properly credit her for time spent in stand up talks or delivering mail, relate to administrative or personnel matters and do not fall within coverage of the Act. Although the handling of disciplinary actions, leave requests, the assignment of work duties, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[13]

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

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

[8] *Jimmy B. Copeland*, 43 ECAB 339 (1991).

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

[10] *James W. Griffin, supra* note 7.

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

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

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

The Board finds that appellant did not submit sufficient evidence to establish that her supervisor committed error or abuse with regard to these allegations. In determining whether the employing establishment erred or acted abusively, the Board has examined whether it acted reasonably.[14] Ms. Warren stated that she made unpopular, but necessary, changes when she arrived at the Hillsborough station in order to make the office more productive and to comply with postal rules and regulations. The Board finds that her actions regarding appellant's labels and edit books were in keeping with her goals and reasonable under the circumstances. Appellant's allegation that her request for training was unfairly denied is also without merit. Ms. Warren indicated that, pursuant to the national agreement between the employing establishment and the union, appellant was not entitled to receive training on her new route. She explained that a substitute carrier, who was previously paid for training, had been authorized training before her arrival at the employing establishment. Ms. Warren cancelled appellant's scheduled training before it occurred, noting that the employing establishment was not obligated to compensate appellant for it. Appellant was provided a copy of the postal regulations regarding payment for training to inform her of the established rules and regulations. The evidence does not establish that appellant was treated in a disparate manner and her supervisor's actions are not established as abusive or in error.

Appellant has not shown that her supervisor committed error by failing to properly credit her for time spent or deliveries made. Ms. Warren stated that she had submitted all edit books as required, and denied erasing appellant's edit book. She indicated that appellant had not followed proper procedures, which included filing a grievance, for objecting to mail counts. The Board notes that, in its September 30, 2005 decision dismissing appellant's grievance, the NLRB cited an independent investigation, which found that a proper route inspection had been conducted and that appellant's route did not warrant modification. To the extent that appellant desired a change in the rating of her route in order to get Saturday off, her emotional reaction must be considered as self-generated.

Ms. Warren's denial of appellant's request for LWOP on one occasion does not constitute abuse or error. The denial of LWOP due to operational needs is a reasonable exercise of supervisory discretion. Moreover, the record reflects that appellant had been granted LWOP on several occasions, and that she was ultimately able to take LWOP on the date in question, after obtaining coverage by a substitute carrier.

Appellant alleged an incompetent management style on the part of her supervisor created stress and an overall hostile environment. She alleged that Ms. Warren made wholesale unnecessary changes at the employing establishment, which adversely affected productivity and morale. However, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment and is not compensable under the Act.[15] For the same reason, appellant's complaint that Ms. Warren moved, and removed, useful equipment, and failed to provide necessary office

[14] *See Richard J. Dube*, 42 ECAB 919 (1991).

[15] *See Cyndia R. Harrill*, *supra* note 13. (The Board noted that claimant's reaction to perceived poor management must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment.)

supplies is not compensable, as it merely represents frustration from not being permitted to work in a particular environment.[16]

Appellant alleged that Ms. Warren verbally abused her on several occasions. On August 31, 2004 she became aware that Ms. Warren had failed to submit the 4003 form to support a change in her route status to 40K. When appellant asked her to send in a 4003 by the following Friday, Ms. Warren allegedly said, "No. I'm not going to do it!" At a March 25, 2004 stand-up talk, when appellant raised her hand to explain that employees are not paid to separate mail into more than two bins, Ms. Warren reportedly pointed her finger at appellant and stated, "[Appellant], don't interrupt me!" In late April or early May 2004, after attaching a note to appellant's case containing information regarding carriers' entitlement to compensation for training, Ms. Warren allegedly said, "Give that to me, that is mine." The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[17] While these statements may have engendered offensive feelings, they do not sufficiently affect the conditions of employment to constitute verbal abuse.[18]

The record reflects that appellant filed grievances. Grievances and NLRB complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[19] Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under Equal Employment Opportunity Commission or other standards. Rather, the issue is whether the claimant, under the Act, has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence. The evidence in this case does not establish that appellant's supervisors committed error or abuse in discharging their supervisory or managerial duties. Therefore, the Board finds that appellant has failed to establish a compensable factor of employment with regard to these allegations.

Appellant alleged that Ms. Warren singled her out and did things to her just for spite. She alleged that her route was "over-burdened," that she was the only regular route carrier that was required to count her route and that she was required to stay late and case mail for an extra 20 minutes on the Tuesday before a presidential funeral. The employing establishment denied that appellant had been harassed or had been the subject of discrimination. Ms. Warren stated that she never singled appellant out and that she had managed the postal station with professionalism. Appellant submitted witness statements corroborating that she worked overtime on the Tuesday before the Reagan funeral. However, as noted above, the assignment of work duties is an administrative function, and there was no evidence to establish that appellant was intentionally singled out by management, or that her work assignments were otherwise erroneous or abusive. The fact that appellant was required to perform tasks, or work at times,

[16] *Id.*

[17] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[18] *See Denis M. Dupor*, 51 ECAB 482 (2000).

[19] *James E. Norris*, 52 ECAB 93 (2000). *See also Parley A. Clement*, 48 ECAB 302 (1997).

different from those assigned to other employees, does not, by itself, establish abuse. The Board finds that appellant has failed to establish a compensable employment factor with regard to the claimed harassment and discrimination.

Appellant alleged that she experienced emotional stress in carrying out her duties as a rural carrier, which required her to work up to 10 hours per day. The record reflects that she was required to work overtime on occasion and that she worked under tight deadlines. If appellant did not finish her route in time to meet the 5:00 p.m. truck, she was required to drive the mail to Greensboro. The evidence of record established that she was required to work on her edit books during the regular workday, to complete her regular duties and modify the edit books as required. There is no evidence that appellant was assigned any unreasonable demands outside of her job description or that she ever informed her supervisor that she was unable to perform her duties. Under *Cutler*, where the disability results from a claimant's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Act.[20] Given that these duties were part of her regular and specially assigned duties, the Board finds that appellant has established a compensable employment factor. As such, the Office must base its decision on an analysis of the medical evidence. The case will be remanded to the Office for that purpose.

LEGAL PRECEDENT -- ISSUE 2

Section 8126 of the Act provides that the Secretary of Labor, on any matter within her jurisdiction under this subchapter, may issue subpoenas for, and compel the attendance of, witnesses within a radius of 100 miles.[21] The implementing federal regulations provide that a claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the Office hearing representative, who may issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for witnesses only where oral testimony is the best way to ascertain the facts. In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case, and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained.[22] Section 10.619(a)(l) of the implementing regulations provides that a claimant may request a subpoena only as part of the hearings process and no subpoena will be issued under any other part of the claims process.

To request a subpoena, the employee must submit the request in writing and send it to the hearing representative as early as possible, but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.[23]

[20] *See Lillian Cutler, supra* note 5. *See also Tina D. Francis*, 56 ECAB 180 (2004). (Where the claimant alleged that stress related to her regular supervisory duties and to specially assigned duties associated with complaint investigations caused her emotional condition, the Board found that she had established compensable employment factors.)

[21] 5 U.S.C. § 8126.

[22] 20 C.F.R. § 10.619; *Gregorio E. Conde*, 52 ECAB 410 (2001).

[23] 20 C.F.R. § 10.619(a)(1).

The Office hearing representative retains discretion on whether to issue a subpoena. The function of the Board on appeal is to determine whether there has been an abuse of discretion.[24] Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are clearly contrary to logic and probable deductions from established facts.[25]

ANALYSIS -- ISSUE 2

By decision dated November 9, 2005, the Branch of Hearings and Review denied appellant's request for the issuance of witness subpoenas, on the grounds that it was not timely and that appellant failed to explain why statements could not be obtained from the individuals by other methods. The November 9, 2005 decision was affirmed on January 31, 2006 and, again, on January 30, 2007. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts and similar criteria. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[26]

Appellant did not provide any evidence or information establishing why oral testimony was the best way to ascertain the facts in this case. Moreover, the subpoena request was submitted more than 60 days after the original hearing request and was untimely. The Board finds that the Office hearing representative did not abuse his discretion denying appellant's request for subpoenas. The Board will affirm the January 30, 2007 decision on this issue.

CONCLUSION

The Board finds appellant has established a compensable employment factor under *Cutler*. The case will be remanded to the Office to analyze the medical evidence and to determine whether she sustained an emotional condition due to the accepted employment factor. The Board also finds that the Office did not abuse its discretion in denying appellant's request for the issuance of witness subpoenas.

[24] *See Gregorio E. Conde*, *supra* note 22.

[25] *Claudio Vazquez*, 52 ECAB 496 (2001); *Martha A. McConnell*, 50 ECAB 128 (1998).

[26] *Dorothy Bernard*, 37 ECAB 124 (1985).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed as to the denial of appellant's request for witness subpoenas. The decision denying appellant's emotional condition claim is affirmed, in part, and set aside in part and the case remanded to the Office for action consistent with this decision of the Board.

Issued: June 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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