United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 07-2108**
	)	**Issued: June 17, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Bowie, MD, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument May 13, 2008

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 14, 2007 appellant filed a timely appeal from the May 18, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

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

FACTUAL HISTORY

On March 10, 2004 appellant, then a 45-year-old rural carrier, filed a claim alleging that she sustained an emotional condition while in the performance of duty:

> "On February 26, 2004 the OIC (Acting Postmaster) John Denton forced me to submit to a very hostile series of threats and false accusations. I was denied union representation, denied any protection from a very aggressive verbal assault, and

> prevented from leaving the room. My regular supervisor, Ms. Kathy Achimovic, stood with him and did nothing. When I was finally permitted to exit the office, I suffered a nervous breakdown and was taken to the hospital emergency room."

Appellant contended that Mr. Denton used his position to harass, intimidate and attack her: "He has created a hostile work environment, significantly and adversely affecting my ability to do my job and damaging me psychologically and emotionally. Furthermore, Mr. Denton is guilty of violating the Capital Cluster Zero Tolerance Policy on Workplace Violence."

On February 26, 2004 Mr. Denton reported that someone informed him that appellant had made disparaging remarks about him to another rural carrier. Ms. Achimovic informed him that appellant had also made a remark about her that day. Mr. Denton asked appellant to come to his office. Appellant asked if she could bring a union steward, and he said "no." When the union steward attempted to come into his office, Mr. Denton told the steward to go back to her assignment. He questioned appellant about her alleged remarks and told her what he expected of her in the course of her duties, which did not include going from route to route voicing her opinion about management. Mr. Denton then described appellant's tone:

> "[Appellant] said this was a free country and she could say what she wanted, all the while her voice getting loud and out of control. I told her she would have to calm herself down and lower her voice. [Appellant] attempted to try and talk over the top of me and I informed her that she would have to lower her voice or go directly to her case and punch off her 4240 and go home. I went further to remind her of what her duties included in the PO603 which did not involve management duties. I reminded [appellant] that she was to come to work, perform her duties as a rural carrier, and then go home.
>
> "[Appellant] wanted to know who made these allegations about her and I told her that I was n[o]t going to offer that. She said I was 'being paranoid' and that I was harassing her. [Appellant] said I was violating her civil rights of America and that she had rights anywhere, including work. I explained that her code of conduct was clearly defined in section 666 of the Employee and Labor Relations Manual and she [woul]d be required to adhere to it.
>
> "[Appellant] continued to talk very loud, and when questioned, her responses were condescending. At some point, she screamed, 'I'm not listening to anymore of this and I'm going back to my route, I have work to do.' I said, you will be excused when we are finished saying what we brought you in here to say. I then turned to Kathy and asked her if she had anything to add and she said no. I turned to 'appellant' and said, 'You may be excused.' I thought she went back to her route."

Ms. Achimovic, the third person in the room, offered a similar statement, also dated February 26, 2004. She described the meeting as an investigation. Ms. Achimovic stated that appellant's tone was condescending and that Mr. Denton's tone was very firm and to the point.

At no time, she stated, did Mr. Denton threaten appellant. Ms. Achimovic stated that there was no verbal assault and that appellant was not prevented from leaving the room.

Appellant pursued her charges against Mr. Denton and Ms. Achimovic through grievances and an Equal Employment Opportunity (EEO) complaint.

In a decision dated May 7, 2004, the Office denied appellant's claim for compensation. Appellant requested an oral hearing before an Office hearing representative which was held on March 15, 2005. In a decision dated June 3, 2005, the Office hearing representative affirmed the denial of appellant's claim on the grounds that she failed to establish any compensable factor of employment.

Appellant requested reconsideration and submitted copies of depositions submitted for her EEO complaint. Ms. Achimovic testified that appellant did not behave sick when she asked to go home early on November 6, 2003, so she would have challenged any medical documentation stating that appellant was incapacitated that day and would have probably still charged appellant with being absent without leave. Ms. Achimovic stated that on February 26, 2004 she heard Mr. Denton say to appellant's union representative, Brenda Smallwood, that she needed to leave the office because it was not a disciplinary meeting. Mr. Denton testified that appellant was not entitled to union representation on February 26, 2004 because his intention was to have a performance discussion. He explained that discussions are held every day for minor offenses "that you [woul]d like to be able to fix just with communication," and that it was fair to say the discussion would not involve discipline. Mr. Denton testified that "we all got emotional at some point" during the February 26, 2004 meeting. He stated that at one time during the conversation "I had to, I guess, get a little bit more loud than [appellant] had gotten to make her understand or to help her understand what my instructions were." Mr. Denton added that appellant, in his opinion, disliked management from the lowest supervisor to the highest OIC postmaster "and she just did not want to be supervised or did not like any directions given to her on any day."

Appellant also submitted a December 9, 2004 grievance settlement:

> "The parties understand that the Weingarten decision give employees the right to representation during an investigative interview when the employee has the reasonable belief that the interview may lead to discipline. Both parties agree to abide by this Supreme Court decision."

Appellant submitted the following statement from Ms. Smallwood, her union representative:

> "When [Mr. Denton] asked [appellant] to come into the office, he was very angry. When we got into the office, Mr. Denton was upset more than I had seen him before. He very angrily asked me why I was there. I replied that [appellant] asked me to come in with her. [Mr. Denton] very angrily asked me to leave. I replied that [appellant] was entitled to union representation. He said, 'no she [i]s not.' Then, [Mr. Denton] asked me to leave again. I complied. [Appellant] asked me did she have to stay in there with him as I was leaving and I told her yes, but

that we could file a grievance later. I was very concerned for her without me being in there. But what could we do, we were following orders.

"When the meeting started, Mr. Denton said that he was conducting an investigation and based on what he finds out, he [wi]ll determine what further action he'll take against her. He said that she had been going around the office talking to other employees trying to undermine his authority and that she needed to be aware of the disciplinary action that can be taken against her for insubordination. Grievant once again asked for union representation after the meeting got going. Mr. Denton threatened her this time with more severe discipline if she did n[o]t comply with the investigation without union representation by saying if she did n[o]t cooperate with the investigation that you can go pack your things and leave. This is totally unacceptable and a blatant abuse of power to intimidate and scare grievant into management's will and control. Grievant was so upset by Mr. Denton's anger and hostility that when he made a step toward [her] she got frightened and visibly shaken not knowing what his intentions were. He frightened and intimidated her so bad that she was n[o]t able to finish her work that day and have not been able to come to work since for fear of Mr. Denton."

In a decision dated July 28, 2006, the Office denied modification of its June 3, 2005 decision.

Appellant again requested reconsideration. She submitted a November 25, 2005 letter from John H. Ferguson, Associate General Counsel for the National Labor Relations Board, to appellant's congressman concerning the adequacy of the December 9, 2004 grievance settlement. Among other things, Mr. Ferguson stated:

"By agreeing to this settlement, the [e]mployer acknowledges the alleged violations by providing written assurances that it will honor employee rights to union representation at investigatory meetings. While [appellant] is correct that the alleged coercive statements were not specifically addressed in the settlement, as discussed below in response to questions 4 and 5, the alleged coercive statements were clearly encompassed by its terms."

Mr. Ferguson added: "Implicit in the settlement is the protection of the [National Labor Relations] Act not only to invoke *Weingarten* rights, but also to protect a party invoking *Weingarten* rights. Thus, the settlement was deemed to encompass any alleged coercion or threats of discipline for doing so."

In a decision dated May 18, 2007, the Office denied modification of the July 28, 2006 decision. Under "Incidents Which Occurred That Are Not Factors of Employment," the Office listed: "On February 26, 2004 you became upset during the course of an investigative meeting with Mr. Denton and Ms. Achimovic about alleged disparaging comments made by you about these two individuals when you had left your rural route case to talk with a coworker. You were not permitted to have union representation at the meeting."

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] But workers' compensation does not cover each and every injury or illness that is somehow related to employment.[2] An employee's emotional reaction to an administrative or personnel matter is generally not covered. The Board has held that an oral reprimand generally does not constitute a compensable factor of employment,[3] neither do disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct;[4] investigations;[5] determinations concerning promotions and the work environment;[6] discussions about an SF-171;[7] reassignment and subsequent denial of requests for transfer;[8] discussion about the employee's relationship with other supervisors;[9] or the monitoring of work by a supervisor.[10] Generally, actions of the employing establishment in matters involving the use of leave are not considered compensable factors of employment.[11] The Board has generally held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.[12]

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 employer.[13] 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

[1] 5 U.S.C. § 8102(a).

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

[3] *Joseph F. McHale*, 45 ECAB 669 (1994).

[4] *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

[5] *Sandra F. Powell*, 45 ECAB 877 (1994).

[6] *Merriett J. Kauffman*, 45 ECAB 696 (1994).

[7] *Lorna R. Strong*, 45 ECAB 470 (1994).

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

[9] *Raul Campbell*, 45 ECAB 869 (1994).

[10] *Daryl R. Davis*, 45 ECAB 907 (1994).

[11] *Joseph C. DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

[12] *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

[13] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

condition claim.[14] 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.[15] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to 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.[16]

ANALYSIS

Appellant's claim is not one that workers' compensation generally covers. She claims an emotional condition arising out of her interactions with the officer in charge or acting postmaster, Mr. Denton, and with her direct supervisor, Ms. Achimovic, particularly from November 2003 through February 26, 2004. As a rule, such claims fall outside the scope of the Act. The Board has recognized an exception where the evidence establishes error or abuse by the employer, but appellant has not established that her claim falls within this exception.

The Board has reviewed the record, including the statements and testimony of appellant, Mr. Denton and Ms. Achimovic, as well as the statement of Ms. Smallwood, appellant's union representative. The Office's May 18, 2007 finding that appellant and management "have different viewpoints of what actually transpired" is well supported by the evidence. At best, the evidence supports that Mr. Denton treated appellant firmly during the February 26, 2004 meeting, that everyone became emotional at one point and that he had to get a little louder than appellant to make his point. But the evidence does not establish appellant's allegations of hostile threats, false accusations, a very aggressive verbal assault, false imprisonment or disparate treatment. Although the evidence gives the impression that appellant was not on the friendliest terms with Ms. Achimovic and Mr. Denton, the evidence does not show that they created a hostile work environment or engaged in workplace violence.[17]

The record is largely one of allegations made and allegations denied. Appellant has presented no convincing evidence to establish administrative error or abuse. She has pursued her allegations through a number of grievances and an EEO complaint, but her efforts have not yet produced a finding or a final decision that the employer committed error or abuse or otherwise violated her rights. The Board notes that the December 9, 2004 grievance settlement does not by its language admit to any violation of appellant's *Weingarten* rights on February 26, 2004. She points to Mr. Ferguson's letter to her congressman on this matter, but this is merely a courtesy

[14] *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).

[15] *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).

[16] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, concurring).

[17] Appellant's claim does not involve "friction and strain" between coworkers.

response to the congressman's inquiry. It does not constitute an official or formal decision on her grievance. Mr. Ferguson consistently referred to the "alleged" violations, the "alleged" coercive statements and the "alleged" coercion or threats.

Appellant places great importance on evidence supporting that the February 26, 2004 meeting was an investigation, as opposed to a mere discussion, but this is ultimately immaterial to her claim for workers' compensation benefits. Neither the Office nor the Board is the proper forum for adjudicating whether the employer's actions that day violated appellant's *Weingarten* rights. Appellant should not view the Act as a secondary or backdoor vehicle for establishing grievances or EEO complaints that have been denied by the administrative bodies or courts properly charged with adjudicating such complaints.

The Board has reviewed Ms. Achimovic's testimony concerning the denial of sick leave for November 6, 2003. She explained why appellant's medical documentation was inadequate. Further, she explained that based on appellant's behavior that morning, she would have challenged any medical documentation stating that appellant was incapacitated that day and would have probably still charged appellant with being absent without leave. Appellant may find it unreasonable, but she has not shown that the denial, or her suspension for being absent without leave, was in fact erroneous.

Appellant bears the burden of proof to establish her entitlement to benefits. She has not shown that her claim falls within the scope of the Act. The evidence does not establish that her supervisor or the officer in charge committed error or abuse in any administrative or personnel matter. The Board will therefore affirm the denial of her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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