United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
and	)	**Docket No. 08-144**
	)	**Issued: June 3, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Shelton, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 22, 2007 appellant filed a timely appeal from an August 1, 2007 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 a stress-related myocardial infarction in the performance of duty.

FACTUAL HISTORY

On January 16, 2003 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging that she sustained a myocardial infarction causally related to factors of her federal employment. She became aware of her condition on June 28, 2000. Appellant stopped work on June 29, 2000 and returned to work on September 11, 2000.

In an accompanying statement, appellant attributed her myocardial infarction to harassment by Wilfred N. Courchaine, the postmaster, beginning in 1994. Mr. Courchaine denied her request to work overtime inside because of her pregnancy but allowed another carrier to work overtime indoors. He referred to appellant's route as a "baby route." Appellant sustained a work injury on February 7, 1994, assigned file number 010317636. She worked limited duty for four hours per day subsequent to her February 1994 injury. On June 29, 2000 and November 2002 Mr. Courchaine allegedly refused to give her Office forms. In 2001 the employing establishment counseled appellant for her work injuries, including the June 28, 2000 myocardial infarction.

Appellant was hospitalized from June 28 until July 3, 2000. Dr. Jeffrey Lederman, a Board-certified internist, noted in appellant's discharge summary that on the date of admission she complained "of chest discomfort after an altercation with her boss." He diagnosed an acute myocardial infarction. On August 15, 2000 Dr. Mark S. Grogan, a Board-certified internist, listed the history of injury as chest pain after an altercation with her boss. He diagnosed a non-Q wave myocardial infarction and checked "yes" that the condition was caused or aggravated by employment. Dr. Grogan provided as a rationale that it occurred after an "altercation with [a] manager." He found that appellant was disabled from June 29, 2000 until approximately August 31, 2000. On September 27, 2000 Dr. Grogan asserted that appellant had elevated troponin levels while hospitalized. He stated: "It is my opinion her elevated troponin level may have been related to her altercation with her boss in June of 2000." Dr. Grogan noted that it did not appear that appellant had coronary artery disease or coronary spasm.

On January 24, 2003 the employing establishment indicated that appellant had previously filed a traumatic injury claim for the June 28, 2000 myocardial infarction. The Office denied the claim, assigned file number 010375864.

In a July 30, 2000 statement, appellant related that she sustained an employment injury in February 1994. She stated:

> "P.M. Courchaine has made my life difficult during these years since this injury by illegally threatening to terminate my compensation, sending unauthorized people to my home (who had my medical documentation in their possession), interpreting medical results on his own and coming up with bogus job offers…. I've filed grievances against the P.M. in regards to these incidents and won them."

Appellant related that the harassment by Mr. Courchaine culminated in the incident of June 28, 2000.

In a September 12, 2000 decision, a dispute resolution team declared an impasse regarding whether Mr. Courchaine verbally abused appellant on June 28, 2000. Mr. Courchaine asked her where her husband, a coworker and union steward, was that day. He wanted her husband to act as a union representative for a coworker. Appellant responded that the Mr. Courchaine knew that her husband had not been called in for weeks. She maintained that he harassed her about her husband's whereabouts until her chest tightened. Management maintained that appellant could have replied that she did not know where her husband was or declined to answer the question. A witness statement submitted as part of the dispute resolution

process indicated that Mr. Courchaine asked her where her husband was and that she became upset following the incident. In a July 11, 2000 statement, Gary Esposito related that Mr. Courchaine inquired about the location of appellant's husband and she twice asked him if he was joking. Appellant replied that he was playing games and that her husband had not worked on his day off in more than a month. She began to cry.

In an undated statement, Mr. Courchaine related that he asked appellant where her husband was. Appellant asked him to repeat what he said and he did. She then asked Mr. Courchaine if that was a joke and became upset. Appellant noted that he had not worked on his off day in weeks.

Appellant filed a grievance alleging that management refused to provide her with a Form CA-16s on June 29, 2000. A September 26, 2000 grievance resolution noted that her husband requested a Form CA-16 on June 29 and 31, 2000 but could not provide the name of the attending physician. Management asserted that it offered a Form CA-16. The grievance was resolved with management agreeing to follow the ELM [Employee Labor Relations Manual] guidelines.

On March 23, 2003 appellant submitted a May 22, 1991 union memorandum regarding home visitations by supervisor of injured workers. The memorandum indicated that there should be no unannounced visits and that employees should be allowed to refuse admission to their home. Appellant filed a grievance alleging that management erred in visiting her at home on April 16, 1998. She asserted that supervisors had her medical records and visited her home unannounced. Management maintained that the supervisors had work restrictions rather than medical records and it would now abide by the National Agreement and ELM regarding Office cases. On May 8, 1998 the grievance was resolved with management agreeing to follow the ELM and EL-806 in regards to Office cases.

On July 22, 1999 a dispute resolution team resolved a grievance filed by appellant alleging that management disregarded her physician's restrictions to work four hours per day by instructing her to return to her regular full-time employment. The team noted that the employing establishment sent her for a fitness-for-duty evaluation and the physician found that she could resume her usual work. Appellant's physician found that she could work only four hours per day. A joint contract between union and management provided that the Office resolved disputes about the condition of injured employees. The dispute resolution team found that she should remain on part-time limited duty as her physician directed and that management should obtain instructions from the Office if it believed her work restrictions should be lifted.

In a report dated September 11, 2002, Dr. Grogan related that he treated appellant on that date "for further evaluation of her non-Q wave myocardial infarction with documented troponin-I elevation following an altercation at her workplace in June 2001." He found that it was more likely than not that her "[t]roponin-I elevation suggesting myocardial necrosis occurred as a result of her verbal confrontation with her superior at the [employing establishment]."

A witness specifically described vulgar language used by Jim Cordon toward appellant. The witness and two coworkers heard the statement.

By decision dated July 28, 2003, the Office denied appellant's claim on the grounds that she did not establish an emotional condition in the performance of duty. The Office found that she had not established any compensable employment factors.

On August 25, 2003 appellant requested an oral hearing, which was held on March 15, 2004. At the hearing, her husband related that two supervisors visited her home after she finished her four hours of limited duty. Appellant submitted a transcript of a telephone conversation between a union representative and one of the supervisors.[1] The supervisors indicated that Mr. Courchaine gave them her medical records. Appellant filed a grievance about the home visitation and asserted that it should be conducted by medical personnel rather than supervisors. The grievance was resolved and management had to cease sending people to her house. On March 1, 1997 a supervisor used abusive language. Mr. Courchaine instructed her to work full time rather than four hours per day. Appellant filed a grievance and a dispute resolution team indicated that her ability to work was a matter for the Office to resolve. Mr. Courchaine also offered her full-time jobs on June 24 and December 29, 1999. Appellant continued to work four hours per day, except for time missed as a result of her heart attack. Coco Martin, a coworker, told her that her husband was not called in for overtime in an attempt to force her to work eight hours per day. Jody Simon told her that she was taking too long preparing her mail for delivery. Appellant informed Mr. Simon about her medical restrictions and he said that she was on time with her preparation. She believed that the postmaster harassed her by asking where her husband was because the postmaster was already aware that he was not at work. Mr. Courchaine refused to give appellant's husband a Form CA-16. The employing establishment talked with her daily about her work injuries, including her heart attack on June 28, 2000.

By decision dated June 14, 2004, the Office hearing representative affirmed the July 28, 2003 decision. She found that appellant had not established any compensable work factors.

On June 8, 2005 appellant requested reconsideration. She contended that the hearing representative ignored the fact that she won her July 22, 1999 grievance against the employing establishment. On October 15, 2003 appellant's grievance regarding the June 28, 2000 altercation with Mr. Courchaine was resolved. The parties agreed to the principles of the joint statement of behavior in the workplace. Appellant also noted that she learned that Mr. Condron, a supervisor, used obscene language when referring to her but received no discipline. She maintained that Mr. Courchaine instructed her to ask for assistance to abide by her physical limitations. Appellant asserted that constantly requesting help reminded her of her restrictions due to her employment injury and was an imposition on her coworkers. She submitted a June 8, 2005 statement from a coworker, Marlies Bellows, who confirmed that appellant constantly required the assistance of coworkers to perform her duties. Appellant also submitted statements from coworkers who had employment injuries but were not visited at home.

On May 3, 2007 appellant again requested reconsideration. By decision dated August 1, 2007, the Office denied modification of its June 14, 2004 decision.

[1] The statement purporting to be the transcript is not signed by any party.

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 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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] 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.[3]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[4] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[5] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[6]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[7] A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[8] The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[9] 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

---

[2] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[4] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

[5] *See William H. Fortner*, 49 ECAB 324 (1998).

[6] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[7] *See Michael Ewanichak*, 48 ECAB 364 (1997).

[8] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

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

of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[10]

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.[11] 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.[12]

ANALYSIS

Appellant alleged that she sustained a stress-related myocardial infarction as a result of a number of employment incidents and conditions. The Office denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant contended that Mr. Courchaine harassed and verbally abused her on June 28, 2000, the date of her myocardial infarction. If disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of her regular duties, these could constitute employment factors.[13] The evidence, however, must establish that the incidents of harassment or discrimination occurred as alleged to give rise to a compensable disability under the Act.[14] Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[15] Appellant related that on June 28, 2000 Mr. Courchaine asked her where her husband was. She asked if he was joking and he repeated the question. Appellant became upset because management had not called in her husband to work overtime for a long time. A coworker told her that management was not allowing her husband to work overtime in order to get her to return to work full time. Appellant believed that Mr. Courchaine was deliberately harassing her by asking about her husband's whereabouts. In an undated statement,

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

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

[12] *Id.*

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

[14] *Id*.

[15] *Marguerite J. Toland*, 52 ECAB 294 (2001).

Mr. Courchaine related that he asked appellant where her husband was and she responded that he must be joking. He asked again and she became upset and said that he had not worked on his day off for along day. Witness statements support that the events of June 28, 2000 occurred as described. Witness statements indicate that Mr. Courchaine was aware that appellant's husband was not at work that day as he had tried to utilize him in his capacity as a union representative. The statements by the witnesses, however, do not provide evidence that the questions or comments by the postmaster constituted verbal harassment.[16] Appellant has not shown that Mr. Courchaine's questions regarding her husband's whereabouts constituted either harassment or verbal abuse. In an October 15, 2003 grievance settlement, the parties agreed to the principles of joint behavior in the workplace and maintaining dignity and fairness. The settlement does not establish harassment or abuse by the postmaster. If Mr. Courchaine's comments offended appellant, her emotional reaction is self-generated as it resulted from her perceptions about her supervisor's motives for the questions.[17] Consequently, appellant has not established a compensable employment factor.

Appellant also alleged that she learned that a supervisor used obscene language in referring to her. A coworker confirmed that he heard Mr. Condron use insulting language. As noted, however, not every statement uttered in the workplace will give rise to coverage under the Act.[18] The supervisor's comment was not made directly to appellant or otherwise in her presence and there is no evidence that this was ongoing or repeated conduct on his part. Thus, appellant has not established a compensable employment factor.[19]

Appellant maintained that Mr. Courchaine denied her request to work overtime inside when she was pregnant. Although the assignment of work duties is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. 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.[20] Appellant has not submitted any evidence of error or abuse by Mr. Courchaine refusing to allow her to work overtime in an inside work location. Further, her frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.[21]

Regarding appellant's contention that Mr. Courchaine refused to provide her with the proper Office forms, the Board finds that she has not established error or abuse in an

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

[17] *See David S. Lee*, 56 ECAB 602 (2005).

[18] *Marguerite J. Toland*, *supra* note 15.

[19] *See Mary A. Sisneros*, 46 ECAB 155 (1994).

[20] *Lori A. Facey*, 55 ECAB 217 (2004).

[21] *See Cyndia R. Harrill*, *supra* note 16.

administrative matter. She filed a grievance which was resolved without a finding of fault by any party.[22]

Appellant argued that management issued her an unauthorized job offer. She filed a grievance contending that management failed to adhere to her physician's restrictions when it instructed her to return to full-time employment. On July 22, 1999 a dispute resolution team noted that a physician who performed a fitness-for-duty examination found that she could return to her usual employment but that her attending physician restricted her to work four hours per day. The dispute resolution team found that appellant should remain on part-time limited duty as directed by her physician and that management should obtain instructions from the Office if it believed that her restrictions should be changed. The finding by the dispute resolution teams fall short of establishing administrative error or abuse by management and thus is insufficient to establish a compensable employment factor.

Appellant maintained that she had to constantly seek assistance from her coworkers because of physical limitations from a prior work injury. She related that she experienced stress because she inconvenienced her busy coworkers, which reminded both herself and others about her limitations. A statement from a coworker confirms that appellant frequently asked for help performing her duties. Her reaction to asking her coworkers for assistance, however, appears to be self-generated as it resulted from her perception that she was causing her coworkers inconvenience.[23] Appellant also indicated that Mr. Simon told her that she took too long performing her duties; however, when she explained that she had work restrictions, he acknowledged that she was performing her duties in a timely manner. She has not submitted any evidence that Mr. Simon acted erroneously by failing to be aware of her physical limitations.

Appellant further alleged that management erred in visiting her home unannounced on April 16, 1998. She alleged that the supervisors who visited her home had her medical records in their possession. Management indicated that supervisors had appellant's work restrictions rather than her medical records. Management stated that it would "now follow Article 3 & 41 of the National Agreement, the ELM pertaining to [the Office] and EL-806." The language of the agreement does not prohibit home visits. It discourages them by noting: "there should be no more unannounced visits and that employees should be allowed to refuse admission to their home." The fact that the employing establishment agreed to follow the agreement does not rise to the level of or equate to an admission that an error occurred. Thus, this is insufficient to establish a compensable factor of employment.

As appellant has not established any compensable factors of employment, the Board finds that she did not sustain an emotional condition in the performance of duty.[24]

---

[22] *See Ronald K. Jablanski*, 56 ECAB 616 (2005) (although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and not compensable absent evidence of error or abuse by the employer).

[23] *See David S. Lee*, *supra* note 17.

[24] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of his emotional condition, any medical evidence relating appellant's emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671, 674 (2003).

CONCLUSION

The Board finds that appellant has not met her burden to establish stress-related myocardial infarction in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2007 is affirmed.

Issued: June 3, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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