United States Department of Labor
Employees' Compensation Appeals Board

K.H., Appellant	)	
and	)	**Docket No. 08-826**
	)	**Issued: September 16, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Eau Claire, WI, 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 January 24, 2008 appellant filed a timely appeal from a December 7, 2007 decision of the Office of Workers' Compensation Programs denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On May 17, 2007 appellant, then a 41-year-old mail handler, filed a Form CA-2, occupational disease claim, alleging that factors of her federal employment caused anxiety and depression. She stated that forced overtime, a stressful environment and harassment caused her condition. Appellant stopped work on February 21, 2007, returned to work four hours a day on April 16, 2007, six hours a day on April 30, 2007 and eight hours a day on May 7, 2007.

By letter dated June 26, 2007, the Office informed appellant of the evidence needed to support her claim. In a May 17, 2007 statement, appellant alleged that she was harassed by coworkers who felt she had been hired through connections and was forced to work overtime of up to 10 hours a night for 6 nights a week for undetermined lengths of time. On one occasion, after she had put in 10 hours, she was forced to work an additional 2 hours, on several occasions she did not do her bid job and she was forced to work the majority of holidays. Appellant was harassed by Chris Olson, a supervisor, who denied her leave requests, accused her of being the girlfriend of Scott Rygiel, a union steward, provided contradictory work instructions and constantly monitored her work. Ms. Olson allegedly told coworkers that she was using up her sick leave and was then going to quit. Appellant noted that her depression became worse in July 2006. On September 10, 2006 she went to urgent care and was prescribed an anti-anxiety medication and in October 2006, her physician restricted her to 50 hours per week. Appellant stated that she left work in the middle of her shift on February 21, 2007 because she became anxious and depressed. She alleged that she was improperly denied leave in November 2006 and January and February 2007 and that there was nothing inappropriate about her relationship with Mr. Rygiel, noting that she would discuss management issues with him during her break.

Appellant also submitted a statement from union stewards Kris Bush and Robert W. Harvey. They noted that on February 7, 2007 she approached them because she was extremely upset and stressed from the excessive mandatory overtime that was being forced on the mail handler craft and because she was harassed by Ms. Olson. In a February 13, 2007 statement, Mr. Rygiel noted that on January 30, 2007 Ms. Olson denied appellant's leave request for February 20, 2007 and that when he discussed this with Ms. Olson, she "went off" on him, saying she was tired of his girlfriend always getting off when she wanted and always getting her way. Coworkers Janalee Kadler, Bruce Blum and Dave Marucheck advised that in March 2007 Ms. Olson told them that appellant was using up her sick leave and was not coming back to work.

In a May 10, 2002 letter to all craft employees, James R. Hauger, plant manager, advised that a step three decision had been settled regarding a class action grievance filed at the employing establishment. Prior to the settlement, it had been the position of local management that overtime would not be forced but that this violated the national agreement and was no longer an option. Mr. Hauger stated that, to comply with the settlement agreement, mail handlers who had placed their name on an overtime desired list would work up to 12 hours per day, 7 days a week and mail handlers who had not placed their names on an overtime list would work up to 10 hours per day 6 days a week. In a January 12, 2007 letter, Roger Rihn, plant manager, advised that until further notice, mail handlers would be scheduled to work 10 hours a day, 6 days a week and that the only exception was employees who had medical documentation preventing them from working the schedule. He asked for volunteers to work 12-hour days.

Appellant also submitted minutes of a labor-management meeting dated October 5, 2006 in which Ms. Olson was discussed, additional comments regarding the meeting by union representatives, copies of denied leave requests, work schedules of employees dating from September 9, 2006 through February 16, 2007 and a statement signed by 10 coworkers on October 20, 2007 attesting that they witnessed nothing inappropriate between appellant and Mr. Rygiel.

By report dated September 10, 2006, Dr. John Snyder, Board-certified in family medicine, noted appellant's complaint of stress at work. He diagnosed dyspnea, likely related to work stress. Dr. Jodi Ritsch, Board-certified in family medicine, submitted reports dating from October 24, 2006 to March 26, 2007, in which she diagnosed anxiety and depression. Dr. Jay Collier, a Board-certified psychiatrist, submitted reports dating from an intake assessment on January 18 through June 4, 2007. In reports dated March 6 and April 26, 2007, Dr. William J. Weggel, a Board-certified psychiatrist, noted seeing appellant for medication management and her report that her depression was caused by stress at work. He diagnosed panic disorder without agoraphobia and major depressive disorder, single episode, moderate. Appellant also submitted reports from Teresa Owens, a nurse practitioner, Linda Coffield, M.S., a therapist and Jackie T. Joday, M.S.W.

The employing establishment controverted the claim. In an August 15, 2007 statement, Ms. Olson responded to appellant's allegations, noting that she had a medical restriction for five 10-hour days and that her leave requests were denied because the leave board was filled. When Mr. Rygiel asked that an exception be made, she told him that she did not play favorites. Ms. Olson stated that, when trying to find appellant, she would be with Mr. Rygiel, either on the dock or in the union office and that she had no idea why appellant was off work. She stated that because no mail handlers were on the overtime list, all were being scheduled for 10 hours a day, five or six days a week depending on applicable work restrictions. Ms. Olson also provided comments to appellant's May 17, 2007 statement, noting that management had the right to assign job duties.

By decision dated December 7, 2007, the Office denied the claim on the grounds that, appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[1]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[2] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[4] When an employee experiences

[1] *Ronald K. Jablanski*, 56 ECAB 616 (2005).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Robert W. Johns*, 51 ECAB 137 (1999).

emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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 results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[5]

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.[6] 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.[7]

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.[8] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[9]

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. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. 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.[10]

[5] *Lillian Cutler, supra* note 2.

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

[7] *Id.*

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

[9] *Kim Nguyen*, 53 ECAB 127 (2001).

[10] *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

ANALYSIS

Appellant alleged that she sustained a stress-related condition as a result of a number of conditions at work. By decision dated December 7, 2007, the Office denied her claim on the grounds that she did not establish a compensable factor of employment.

Regarding appellant's allegations that she was improperly denied leave, improperly monitored and assigned duties outside her craft, these are administrative functions of the employing establishment. 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11] In this case, the employing establishment explained that appellant's leave was denied because the leave board was full and she submitted no evidence to support her allegations that she was improperly monitored or worked outside her craft. She therefore did not establish that these administrative matters were compensable.[12]

Appellant also generally alleged that she was harassed by her coworkers and Ms. Olson. For harassment or discrimination to give rise to a compensable disability, there must be evidence that establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[13] Appellant has not submitted evidence to support that she was harassed by her coworkers. She contended that comments made by Ms. Olson regarding her relationship with Mr. Rygiel and her absence from work constituted harassment and submitted the statements from coworkers who noted that Ms. Olson had referred to appellant as Mr. Rygiel's girlfriend and that they did not behave inappropriately. The coworkers also noted that Ms. Olson said that appellant would not return from sick leave. The Board has recognized the compensability of verbal abuse in certain situations. This, however, does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[14] While the statements made by Ms. Olson may have engendered unpleasant feelings, the Board finds that they did not sufficiently affect the conditions of employment to constitute a compensable employment factor.[15] Appellant therefore did not establish a compensable employment factor with respect to the claimed harassment.[16]

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[11] *M.D.*, 59 ECAB ____ (Docket No. 07-908, issued November 19, 2007).

[12] *See Jeral A. Gray*, 57 ECAB 611 (2006).

[13] *James E. Norris, supra* note 10.

[14] *V.W.*, 58 ECAB ____ (Docket No. 07-34, issued March 22, 2007).

[15] *See J.C.*, 58 ECAB ____ (Docket No. 07-530, issued July 9, 2007).

[16] *Robert Breeden*, 57 ECAB 622 (2006).

The Board has held that an emotional reaction to situations in which an employee is trying to meet his or her position requirements is compensable.[17] Overwork, as substantiated by sufficient factual information to corroborate the claimant's account of events, may be a compensable factor of employment.[18] In this case, the record supports that appellant worked overtime on a regular basis. By letter dated May 10, 2002, Mr. Hauger, a plant manager, described a grievance settlement under which mail handlers who had placed their name on an overtime desired list would work up to 12 hours per day, seven days a week and the mail handlers who did not place their names on the overtime list would work up to 10 hours per day six days a week. In a January 12, 2007 letter, Mr. Rihn, a plant manager, advised that all mail handlers would be scheduled to work 10 hours a day, six days a week, with the only exception to these employees who had medical documentation preventing them from working the schedule. He asked for volunteers to work 12-hour days.[19] Ms. Olson confirmed that appellant worked five 10-hour days weekly. The Board finds that this evidence is sufficient to substantiate appellant's allegations of overwork.[20]

As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. The case will therefore be remanded to the Office to analyze and develop to medical evidence.[21] After such further development deemed necessary, the Office shall issue an appropriate decision on the merits of this claim.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

[17] *Tina D. Francis*, 56 ECAB 180 (2004).

[18] *Bobbie D. Daly*, 53 ECAB 691 (2002).

[19] Appellant also submitted daily work schedules of employees. It is unclear from the schedules, however, exactly what hours and what days she worked.

[20] *Bobbie D. Daly*, *supra* note 18.

[21] *Tina D. Francis*, *supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2007 be set aside and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: September 16, 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