United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 08-1412**
	)	**Issued: March 20, 2009**
U.S. POSTAL SERVICE, POST OFFICE, St. Rose Annex, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 15, 2008 appellant filed a timely appeal of a January 14, 2008 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 sustained an emotional condition as a result of conditions of her employment.

FACTUAL HISTORY

On June 4, 2004 appellant, a 30-year-old mail handler, filed an occupational disease claim, alleging that she experienced stress and depression as a result of harassment by her

supervisor, Brenda Jones. She stated that she had been singled out daily and had been subjected to disparate treatment since March 5, 2004.[1]

On June 21, 2004 the Office informed appellant that the information submitted was insufficient to establish her claim. It advised her to submit details of alleged employment incidents that caused or contributed to her claimed condition. The Office also asked for a medical report containing a description of her symptoms, a diagnosis and an opinion, with medical reasons, on the cause of her condition.

Appellant submitted a March 3, 2002 job description for a mail handler. She provided October 25, 2002 office rules for the New Orleans annex reflecting that altercations and verbal threats would not be tolerated.

In a statement dated June 8, 2004, appellant indicated that her supervisor, Ms. Jones, treated her differently from other employees in numerous ways. Ms. Jones allegedly: ordered appellant to work in an unsafe manner; isolated her from her coworkers; assigned a coworker more overtime hours than her; and harassed her "in any way that she could possibly get away with." Appellant opined that Ms. Jones abused her supervisory position to "make people feel like they owe her something." She stated that Ms. Jones favored employees who treated her to lunch. Ms. Jones reportedly made statements at a service talk indicating that she "does n[o]t have a heart or feelings for others." For example, she allegedly gave reasons why employees are fired at the employing establishment, noting that the employing establishment does not care if it is required to rehire the employee and pay "back pay," because "they just want to inconvenience you." Appellant expressed concern that Ms. Jones might try to do something to make her lose her job. She indicated that she did suffer a loss due to the death of her son, but that her severe depression was due to harassment and disparate treatment by her supervisor.

Appellant listed examples of her supervisor's disparate treatment. She stated that on March 5, 2004 Ms. Jones ordered her to unload a fully-loaded truck by herself, thereby violating safety regulations. On March 15, 2004 Ms. Jones warned appellant that her name could be submitted to the downtown location for overtime assignment. Appellant claimed that on March 16, 2004 Ms. Jones warned her to be careful about filing a grievance because the union might turn on her. On March 23, 2004 Ms. Jones allegedly told appellant that she would not be allowed to work overtime if she failed to finish palletizing the mail trays by 2:30 p.m. Appellant noted that she had never heard the supervisor say that to anyone else. She alleged that on March 30, 2004 Ms. Jones denied her request to become an acting supervisor, stating that she did not have enough experience. Appellant stated that the supervisor refused to allow her to work overtime on April 1 and 7, 2004. She indicated that Ms. Jones allowed an employee to read a confidential letter concerning her absence and that on May 2 and 3, 2004 she was ordered to "do sleeves and sacks" and to load trucks by herself. On May 25, 2004 Ms. Jones reportedly "played games with her," by accusing her of being absent without leave (AWOL) for having incorrectly filled out a leave form. Appellant stated that, on June 4, 2004, Ms. Jones denied her request to reschedule a cardiopulmonary resuscitation (CPR) class for a weekend, unfairly accommodating

[1] This is the second time this case had been before the Board. In an order dated June 14, 2007, the Board found that the Office had improperly found that appellant had abandoned her request for a hearing and remanded the case to the Office for a hearing and an appropriate merit decision. Docket No. 07-653 (issued June 14, 2007).

the wishes of her coworkers, rather than hers. She indicated that, on June 7, 2004, she addressed Ms. Jones, who was speaking to a group of people. Appellant alleged that the supervisor turned and stated in an agitated voice, "When I finish. I [a]m in a meeting right!"

Appellant alleged that Ms. Jones improperly prevented her from taking her allotted 30 minutes for lunch on April 13, 2004. She reported as follows: At 11:45 a.m. she was told to begin staging. When appellant informed her supervisor that she needed to use the restroom, she was told to finish her task before going to the restroom. After she stated that she needed to go to the restroom immediately, appellant was told that, if she left the work floor at that time, she should "hit out for lunch and go by [her]self." After returning from the restroom, appellant telephoned her union representative. Ms. Jones later informed her that her seven-minute telephone call had been deducted from her lunch period.

On July 13, 2004 the employing establishment challenged appellant's claim, contending that her allegations consisted of an emotional reaction to administrative matters and that allegations of harassment were unsupported. The employing establishment stated that there were no stressful conditions or conflicts between employees; that appellant had a persecution complex; that she had to be reminded to do her job; and that she often had inappropriate conversations with coworkers.

In an undated statement, Ms. Jones, supervisor, stated that appellant's allegations were unfounded. She denied that she required appellant to unload a trailer by herself on March 5, 2004 noting that a total of three employees were assigned to off-load the trailer. Ms. Jones denied that appellant was unfairly denied overtime, stating that on the dates in question (including March 23, 2004), a sufficient number of employees were already assigned, so as to eliminate any need for overtime employees. She stated that all employees were required to file properly completed leave requests in order to obtain leave.

Ms. Jones acknowledged that she denied appellant's request to work as a supervisory employee because she was inexperienced and lacked the necessary qualities for the position. She noted that appellant made the request only one month after arriving in the unit. Ms. Jones also admitted that she refused to grant annual leave in order to justify overtime, noting that she had a fiduciary duty as a manager to staff the unit using available resources before using overtime personnel. Moreover, it was not good business sense to grant annual leave to create an overtime situation.

Ms. Jones refuted appellant's version of the events that occurred on April 13, 2004. She agreed that she told her to finish the little work in front of her before going to wash up. Ms. Jones noted that all employees received the same instructions, but that appellant was the only one who tried to leave the unit. She stated that, at 11:45 a.m., she told appellant to go to lunch after she went to the restroom. Ms. Jones indicated that, after she used the restroom, appellant informed her that she needed to go home because she "was stressed out." Appellant remained on the workroom floor, talking on her cellular telephone. At noon, she stated that she was speaking with the union branch president, whereupon Ms. Jones told her that she was "now at lunch." At 12:25 p.m., when appellant was still talking on her cellular telephone, the supervisor reminded her that her lunch period ended at 12:30 p.m. She requested leave and was

granted, family medical leave for the period of time missed from work before she returned to her unit after 12:30 p.m.

Ms. Jones denied sharing the contents of a personal letter with a union representative, but admitted sharing a copy of her own letter with the representative. She stated that appellant was asked to complete forms in accordance with employing establishment policy when she asked to change scheduled workdays. On May 25, 2004 appellant's requested and was granted two hours of leave. However, she failed to return to work as scheduled. The following day, Ms. Jones agreed to grant appellant family medical leave for the absence.

Ms. Jones denied that appellant was singled out by being isolated from her coworkers. She stated that every employee was required to work all duties on a rotating basis, including sack containerized operation, which is separated from the palletized operations by 20 feet, due to safety concerns. Ms. Jones also denied that coworkers were favored when CPR training was scheduled. Appellant was informed that the only available days were Monday, Tuesday, Thursday and Friday. She requested Saturday and Sunday -- days which were not options. Ms. Jones denied favoring any employee over any other or behaving inappropriately towards appellant.

Appellant submitted a June 24, 2004 attending physician's report from Dr. Harvey B. Rifkin, a treating physician, who diagnosed major depression and post-traumatic stress syndrome and opined that she was disabled due to present job stress and the death of her son.

By decision dated October 26, 2004, the Office denied appellant's claim, finding that she had failed to identify a compensable factor of employment. It did not address the sufficiency of the medical evidence.

Appellant requested an oral hearing on November 10, 2004. On October 30, 2006 the Office notified appellant that an oral hearing had been scheduled for December 7, 2006. Appellant failed to attend the scheduled hearing. By decision dated December 26, 2006, the Office found that appellant had abandoned her request for an oral hearing. Appellant appealed the Office's decision to the Board. In an order dated June 14, 2007, the Board found that, by failing to schedule appellant's hearing in a timely fashion, the Office had denied her the opportunity to obtain merit review by the Board. Accordingly, the Board reversed the Office's December 26, 2006 decision and remanded the case for an oral hearing and an appropriate decision.

In a February 25, 2005 statement, appellant alleged that her requests for a change in facilities, due to a hostile work environment, had been denied. She stated that such requests were normally honored.

At the October 26, 2007 hearing, appellant reiterated her allegations. She testified that she had filed an Equal Employment Opportunity (EEO) complaint against the employing establishment, which was still pending and that she believed that management was retaliating

against her for filing the claim. Appellant alleged that Ms. Jones gave her a little book to read about Jesus and told her that she needed to find out about religion.[2]

By decision dated January 14, 2008, the Office hearing representative affirmed the October 26, 2004 decision. The representative found that appellant had not alleged any compensable factors of employment and, therefore, had not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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 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.[3]

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 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.[4] Assignment of work is an administrative function of the employer,[5] as is an investigation by the employing establishment.[6] Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[7]

ANALYSIS

Appellant has not attributed her condition to the performance of her regular duties or to any special work requirement arising from her employment duties under *Cutler*, nor has she implicated her workload as having caused or contributed to her condition. Rather, she contends that she was harassed by her supervisor, Ms. Jones. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring

[2] The record contains medical reports relating to appellant's diagnosed depression and post-traumatic stress disorder. However, as the Office denied appellant's claim on the grounds that she failed to establish a compensable factor of employment, these reports are not relevant to the issue before the Board.

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

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

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

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

[7] *Id.*

and arising from appellant's performance of her regular duties, these could constitute employment factors.[8] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[9] In the present case, appellant has not submitted sufficient evidence to establish her claim.[10]

Appellant alleged generally that Ms. Jones harassed and discriminated against her. Ms. Jones allegedly treated her in a disparate manner; and harassed her "in any way that she could possibly get away with." Appellant further alleged that Ms. Jones abused her supervisory position to "make people feel like they owe her something," and that she favored employees who treated her to lunch. Her allegations alone are insufficient to establish a factual basis for her claim.[11] Appellant submitted no evidence to corroborate her general allegations of harassment and discrimination and her allegations were emphatically denied by the employing establishment. General allegations that she was treated unfairly and disrespectfully by management are insufficient to establish that harassment did, in fact, occur. Thus, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment.

Appellant alleged that Ms. Jones improperly denied her requests for overtime on numerous occasions and unfairly allocated more overtime to her coworkers; improperly denied her leave requests; ordered her to work in an unsafe manner by requiring her to unload a truck by herself; isolated her from her coworkers; unfairly denied her request to schedule her CPR classes on the weekend; accused her of being AWOL because she filled out a leave form incorrectly; improperly denied her request to become an acting supervisor; and prevented her from taking her 30-minute lunch break on April 13, 2004. Although the assignment of work duties and disciplinary matters are generally related to the employment, they are administrative functions of the employer rather than regular or specially assigned work duties of the employee.[12] However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13] The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters.

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[8] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[10] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[11] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[12] *See Lori A. Facey*, *supra* note 8. *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

Supervisor Jones denied and appellant has not provided evidence to corroborate, that she inappropriately assigned overtime, shared the contents of a personal letter with a union representative or ordered appellant to work in an unsafe manner by requiring her to unload a truck by herself. In response to appellant's allegations that she was unfairly isolated, Ms. Jones stated that she treated all employees equally with regard to rotating shifts, which required them to work alone at times for safety reasons. She acknowledged that she denied appellant's request to work as a supervisory employee because she was inexperienced and lacked the necessary qualities for the position, having been in the unit only one month prior to applying for the position. Ms. Jones stated that all employees were required to file properly completed leave requests in order to obtain leave and denied that she improperly refused appellant's leave requests. She also admitted that she refused to grant annual leave in order to justify overtime, noting that she had a fiduciary duty as a manager to staff the unit using available resources before using overtime personnel and that it was not good business to grant annual leave to create an overtime situation. The Board finds that the supervisor's actions and procedures were reasonable and responsible under the circumstances. Thus, appellant has not established a compensable employment factor under the Act with respect to the actions referenced above.

Ms. Jones disputed appellant's allegation that she was denied her 30-minute lunch break on April 13, 2004. Appellant was told that her lunch period began when she left the restroom. It was reasonable for the supervisor to deduct the period of time that appellant spent talking on her telephone from her designated lunchtime. Moreover, appellant requested and was granted, family medical leave for the period of time missed from work after her lunch break ended. The Board finds that Ms. Jones' actions in this regard were reasonable. It was also reasonable for a supervisor to deny appellant's request to schedule her CPR class on a weekend, given that weekends were not an available option. Thus, appellant has not established a compensable employment factor under the Act with respect to the actions taken by her supervisor in this case. The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these administrative matters.

Appellant stated that, on June 7, 2004, she addressed Ms. Jones, who was speaking to a group of people. She alleged that the supervisor turned and stated in an agitated voice, "When I finish. I [a]m in a meeting right!" Appellant also claimed that Ms. Jones spoke in an insensitive manner in a meeting and warned her about filing a grievance and told her that she needed to find out about religion. While the Board has recognized the compensability of verbal abuse in certain situations, this does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[14] While the manner and tone of appellant's supervisor may have made appellant uncomfortable, the Board finds that the alleged statements of the supervisor did not constitute verbal abuse or harassment.[15] The supervisor's statements may have offended appellant, but did not rise to the level of coverage under the Act.

[14] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

[15] *See Denis M. Dupor*, 51 ECAB 482, 486 (2000) (explaining that the mere utterance of an epithet which may engender offensive feelings in an employee does not sufficiently affect the conditions of his employment to constitute a compensable factor).

Appellant stated that she was worried that Ms. Jones might do something to get her fired. However, under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from her perceptions regarding her supervisor's actions.[16] Appellant also complained that her requests to relocate to another facility were denied. Her frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.[17]

The record reflects that appellant filed an EEO complaint. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[18] 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 EEO Commission 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 her allegations with probative and reliable evidence.[19] Appellant has failed to do so in the instant case.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act. Therefore, she has not met her burden of proof to establish that she sustained an emotional condition as a result of conditions of her employment.[20]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.

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

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

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

[19] *See James E. Norris, supra* note 18. *See also Michael Ewanichak*, 48 ECAB 354 (1997).

[20] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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