

**United States Department of Labor
Employees' Compensation Appeals Board**

A.J., Appellant

and

**U.S. POSTAL SERVICE, FLORENCE VILLA
STATION, Winter Haven, FL, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-954
Issued: November 4, 2009**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2009 appellant filed a timely appeal from an April 28, 2008 decision of the Office of Workers' Compensation Programs denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that her emotional condition is causally related to a compensable employment factor.

FACTUAL HISTORY

On October 26, 2007 appellant, then a 58-year-old mail processing clerk, filed a claim for an emotional condition. She alleged that her condition was caused by harassment from the station manager. Appellant alleged that the manager was constantly "on her case" and was a "control freak." She alleged that an Equal Employment Opportunity (EEO) complaint was

decided in her favor and supported her allegations.¹ However, the station manager continued to assign appellant additional duties. Appellant alleged that she was not treated with dignity and respect, was required to work outside her medical restrictions and was not allowed to take adequate breaks from work. She alleged that she was given new job tasks in the August 2007 job offer and had specific time deadlines for certain tasks that she had difficulty meeting.

The Office asked appellant to submit additional evidence including a detailed description of the work situations or incidents that contributed to her emotional condition and a comprehensive medical report from her treating physician with a rationalized medical opinion as to how the condition was causally related to factors of her employment.

Appellant submitted medical reports dated September 22 to December 5, 2007 which diagnosed work-related anxiety disorder and major depressive disorder.

In a September 17, 2007 letter, Janet Clayton, an employing establishment human resources specialist, advised the Office that appellant was a rehabilitated employee performing a rehabilitation job since July 1995. In August 2007, the employing establishment presented an updated and revised job offer within her work restrictions. Appellant indicated that she was stressed because of the revised job offer and would see her attending psychiatrist, Dr. Robin N. Wooten on August 31, 2007. In a September 21, 2007 report, Dr. Wooten placed appellant off work effective August 30, 2007 due to work-related anxiety and depression. On October 30, 2007 Ms. Clayton challenged appellant's emotional condition claim. She stated that the job offered to appellant involved an administrative matter and was not a compensable factor of employment. Ms. Clayton noted that the employing establishment offered her a list of tasks that she could perform within her physical restrictions either on a daily basis or as needed by management.

On October 29, 2007 David Lessa, the customer relations manager, noted that appellant alleged that she was picked on at work but provided no specific details. He worked with her for 11 months before she stopped work due to her claimed emotional condition. Mr. Lessa did not observe any behavior by management or coworkers that could be construed as picking on her. He stated that appellant felt imposed upon because she had been offered a modified position that included new tasks. Despite assurances from Mr. Lessa and the injury compensation staff to the contrary, appellant mistakenly believed that she was required to perform every single task on the list every day. Mr. Lessa explained that this was not the case. On December 11, 2007 he further explained that appellant's revised job offer in 2007 included new tasks that were within her physical restrictions and which she had the time to perform on an occasional, not daily, basis. Mr. Lessa explained that the responsibilities of the postal service were always changing due to new technology and new services offered. Consequently, the tasks of employees sometimes needed to be revised as well. Mr. Lessa and the employing establishment injury compensation specialist explained this to appellant. Regarding appellant's allegation that he was constantly on

¹ Of record is a document titled EEO Settlement Agreement Pre-complaint in which appellant voluntarily agreed to withdraw her claims that she was working outside her restrictions and was not treated with dignity and respect. The settlement agreement indicated that the agreement was reached knowingly and voluntarily by appellant and management and the settlement agreement did not constitute an admission of discrimination or wrongdoing on the part of the employing establishment.

her case, Mr. Lessa denied that he monitored appellant too closely. He noted that her assigned workstation was in close proximity to his office. Mr. Lessa indicated that appellant might have perceived that he was watching her too closely, but it was the proximity of their work spaces that created frequent interaction during the workday. He stated that every task on appellant's job offer could be performed within the restrictions provided by her physician. To ensure that she did not work outside her restrictions, she was asked to monitor the time she spent on various tasks and self-limit her tasks so as not to exceed her physical restrictions. Regarding appellant's allegations of low morale among employees, Mr. Lessa noted that there was a staffing shortage that had not been resolved. He noted that her EEO complaint, regarding allegations that she was required to work outside of her physical restrictions and was not treated with dignity and respect by management, was resolved through mediation between the parties, not on the merits of her allegations.

By decision dated April 28, 2008, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable employment factor.

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 employment but nevertheless does not come within the 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.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

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

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.⁵ When an employee fails to establish a compensable factor of employment, the Office should make a specific finding in that regard. If an employee

² 5 U.S.C. §§ 8101-8193.

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

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

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

does establish a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁶ As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by other evidence.⁷ Where the employee alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁹

ANALYSIS

Several of appellant's allegations are not substantiated by the record. She alleged that her emotional condition was caused by harassment from Mr. Lessa, the station manager. Appellant asserted that Mr. Lessa was constantly on her case and was a control freak. She indicated that an EEO complaint was decided in her favor and supported her allegations. However, the EEO settlement agreement states that appellant voluntarily agreed to withdraw her claims that management required her to work outside her restrictions and did not treat her with dignity and respect. The settlement agreement stated that the agreement reached between appellant and management was not an admission of discrimination or wrongdoing on the part of the employing establishment. Mr. Lessa noted that appellant's EEO complaint was resolved through mediation between the parties, not on the merits of her complaint. He denied that he monitored appellant too closely. Mr. Lessa explained that her assigned workstation was in close proximity to his office. Appellant might have perceived that he was watching her too closely, but it was just the proximity of their work spaces that created frequent interaction during the workday. She alleged that her new tasks were outside her work restrictions. However, Mr. Lessa stated that every task in the job offer could be performed within the restrictions provided by her physician. To ensure that she did not work outside her restrictions, she was asked to monitor the time she spent on various tasks and self-limit her tasks to meet her physical restrictions.

Several of appellant's allegations involve administrative or personnel matters. 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.¹⁰ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ Appellant alleged that she was given new tasks in the August 2007 job offer and had specific deadlines for certain tasks but had difficulty meeting the deadlines. She felt imposed upon because she had

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

⁸ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ *See Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Id.*

¹¹ *Janice I. Moore*, 53 ECAB 777 (2002).

been offered a modified position in August 2007 with new tasks. Despite assurances from Mr. Lessa and the injury compensation staff to the contrary, appellant believed that she was required to perform every task on the list every day. Mr. Lessa explained that appellant's revised job offer in August 2007 included new tasks that were within her physical restrictions. He noted that she had the time to perform the tasks on an occasional, not daily, basis. Mr. Lessa explained that the responsibilities of the postal service were always changing due to new technology and new services. For this reason, the tasks of employees needed to be revised. Mr. Lessa and the injury compensation specialist explained this to appellant. Ms. Clayton, the human resources specialist, confirmed that the employing establishment offered appellant a list of tasks that she could perform within her physical restrictions, either on a daily basis or as needed by management. There is no evidence in the record, that appellant's job duties actually exceeded her restrictions.

Appellant's allegations regarding the assignment of new tasks and the deadlines in her August 2007 revised job offer involve administrative matters. She has not established error or abuse by management in the handling of these matters. Complaints regarding the manner in which a supervisor performs his or her duties fall outside the scope of the Act, absent error or abuse.¹² Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent error or abuse.¹³ Appellant failed to establish error or abuse in management's assignment of new tasks and in setting deadlines for the completion of tasks. Therefore, these allegations do not constitute compensable factors of employment.

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied her emotional condition claim.¹⁴

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.

¹² See *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹³ *Id.*

¹⁴ See *supra* note 10 (in the absence of compensable factors of employment, there is no need to address the medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 28, 2008 is affirmed.

Issued: November 4, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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