

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

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| J.C., Appellant |) | |
| |) | |
| and |) | Docket No. 09-1186 |
| |) | Issued: April 22, 2010 |
| U.S. POSTAL SERVICE, POST OFFICE, Laconia, NH, Employer |) | |
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Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 5, 2009 denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

The case was before the Board on a prior appeal. In an order dated March 24, 2008, the Board remanded the case to the Office.¹ The Board noted appellant's allegations and found the Office did not make adequate findings of fact on the issue presented. In a March 1, 2007 statement, appellant alleged that she was subject to harassment from a coworker, Linda McNutt.

¹ Docket No. 08-115 (issued March 24, 2008).

She alleged the coworker told her she was lazy and made comments to others when appellant was on leave under the Family Medical Leave Act. Appellant alleged the coworker was generally sarcastic and condescending, and at other times she would yell at her. The Board found that in its September 6, 2007 decision the Office did not make appropriate findings with respect to appellant's allegations and the evidence of record.

On return of the case record, the Office issued a July 8, 2008 decision denying the claim for compensation. It discussed appellant's specific allegations of harassment with regard to Coworker (and subsequent supervisor) Ms. McNutt, and found appellant had not established a compensable work factor.

Appellant requested a telephonic hearing with an Office hearing representative, which was held on November 13, 2008. At the hearing, appellant reiterated her allegations that Ms. McNutt constantly made degrading and critical comments.

By decision dated March 5, 2009, the hearing representative affirmed the July 8, 2008 Office decision. The hearing representative found appellant had not established a compensable work factor.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where 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.⁴

A reaction to an administrative or personnel matter is generally not covered, as it is not related to the performance of regular or specially assigned duties.⁵ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁶

ANALYSIS

The initial question presented is whether appellant has alleged and substantiated a compensable work factor with respect to her claim. Once a compensable work factor is established, the medical evidence is reviewed on the issue of causal relationship between a diagnosed condition and the compensable work factor or factors.

Appellant has alleged harassment and verbal abuse by a coworker in this case. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁸ Appellant indicated that she worked with the coworker as window clerks from June 2006 to February 2007 and the coworker would make critical comments that appellant felt were degrading. With regard to specific alleged incidents, there is no probative evidence sufficient to establish a compensable work factor. Appellant alleged, for example, that the coworker told a customer that she was "just too lazy" to help with a package and the coworker was often sarcastic and at times yelled.

Although the Board has recognized that a compensable factor may be established based on verbal abuse,⁹ not every statement that is uttered in the workplace is sufficient to give rise to a compensable work factor.¹⁰ While appellant may have felt uncomfortable or offended by the manner and tone of the coworker's statements, it does not rise to the level of verbal abuse.¹¹ The Board notes that a supervisor, Joseph Perry, reported that appellant often criticized the coworker, and refused to work out her problems with the coworker. There clearly were conflicts with the coworker, but there is no probative evidence of harassment or verbal abuse. As to alleged incidents of yelling, a raised voice does not itself establish verbal abuse.¹²

Appellant alleged a specific incident where she had used sick leave to care for her son and later in the day she attended her daughter's hockey game. According to appellant, the supervisor called appellant's friend at the game to see if appellant was there. As to the incident, the postmaster's statement reported that management and the union agreed "it would not happen again." The Board notes that there was no admission of error or specific finding of error by the

⁶ *Margreat Lublin*, 44 ECAB 945, 956 (1993).

⁷ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁸ *Helen P. Allen*, 47 ECAB 141 (1995).

⁹ *David W. Shirey*, 42 ECAB 783 (1991).

¹⁰ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹¹ *See V.W.*, 58 ECAB 428 (2007); *Denis M. Dupor*, 51 ECAB 482, 486 (2000).

¹² *Beverly R. Jones*, 55 ECAB 411 (2005); *Karen K. Levene*, 54 ECAB 671 (2003).

supervisor.¹³ The telephone call was not made to appellant, nor did appellant speak to the supervisor. The evidence of record is not sufficient to establish error or abuse in this regard.

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁴

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an emotional condition causally related to compensable work factors.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 5, 2009 and July 8, 2008 are affirmed.

Issued: April 22, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹³ Even if there had been a grievance settlement agreement not to engage in specific activity, there must be probative evidence, such as an admission of error, to establish error or abuse. See *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹⁴ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).