United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 10-454**
	)	**Issued: November 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Stratford, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 8, 2009 appellant filed a timely appeal from the November 20, 2009 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On January 21, 2009 appellant, then a 32-year-old letter carrier, filed a claim alleging that she sustained an emotional condition in the performance of duty due to various incidents and conditions at work.[1] In a January 20, 2009 statement, she attributed her emotional condition to management's failure to follow her physicians' restrictions. Appellant alleged that several supervisors, including Nilsa Mercado, Ernest Jackson and Elise Vidro, tried to strong-arm her into doing overtime or to rack other routes. She asserted that she had been promised a transfer that did not occur and that she was threatened with being suspended. On January 15, 2009 appellant was scheduled to be at work at 8:30 a.m., but traffic was backed up due to the weather, causing her to spend two hours in traffic. She telephoned Ms. Vidro to advise her that she was running late and was told that Ms. Vidro would inform Mr. Jackson. When appellant arrived at 9:30 a.m., Mr. Jackson told her that he never got the message and that Ms. Vidro was not her supervisor. Since she was late, Mr. Jackson told her to rack on route 1441 for 30 minutes. Appellant indicated that she did so and consequently was late for her route at 11:00 a.m. She had been working for an hour when a postal truck pulled up and she was brought 30 minutes of overtime work on route 1427, a task which she had never performed. Appellant called Mr. Jackson to ask why she was assigned this pivot, given that he knew that her medical restrictions dictated that she work no more than eight hours a day and she only work one route, namely route 1421. She alleged that Mr. Jackson told her that he took these actions because she was an hour late and he was short on help. Appellant got a call from Ms. Mercado, who threatened her with emergency replacement if she did not do the pivot work. She told Ms. Mercado that she was coming back to turn in her keys, the rest of her route and the pivot. Appellant also alleged that her anniversary date was illegally changed from 2006 to 2008.

In a January 22, 2009 statement, Ms. Mercado stated that due to the large amount of open routes, the supervisors had to make a last minute change for coverage and they assigned appellant a half-hour pivot. Although appellant was on an eight-hour restriction, she reported to work over an hour late on January 15, 2009 and completing the pivot was within her restrictions. Ms. Mercado noted that appellant told Mr. Jackson that she would not do the pivot work because of her restrictions and that she was also restricted to work only on her assigned route. She and Mr. Jackson checked her medical documentation which confirmed the eight-hour restriction, but it was not clear that she was restricted to only her assigned route. Ms. Mercado telephoned appellant in the presence of Mr. Jackson and told her to complete the pivot, because it was not beyond her eight-hour restriction. Appellant refused and began to shout that she was not going to do it, so Ms. Mercado gave her a direct instruction. She then shouted that not only was she not going to do the pivot, but she was not going to deliver the rest of her route. Ms. Mercado told appellant that she would be placed on emergency replacement if she refused to follow instructions and that she responded that she should do what she had to do and hung up the telephone. Appellant then returned to the station and turned in her keys. Ms. Mercado stated appellant's behavior was a violation of the labor-management agreement.

[1] The Office previously accepted on May 19, 2008 that appellant sustained an anxiety disorder (not otherwise specified) and a major depressive disorder due to work factors. Appellant had alleged that prior to December 2007 she had been subjected to profanities, yelling and implied threats from supervisors. These accepted conditions are not the subject of the present appeal.

In a January 28, 2009 statement, appellant reiterated that she was threatened with emergency replacement when she told Mr. Jackson and Ms. Mercado to follow her restrictions. She subsequently received a predisciplinary action while she was still on sick leave despite the fact that she had not done anything wrong.

In a March 18, 2008 report, John Rogawski Ph.D., an attending clinical psychologist, released appellant to work and recommended that she be transferred to another work unit. He advised that she was willing to work 40 hours a week and to be placed on her hold-down delivery route. In a March 19, 2008 form report, Dr. Rogawski stated that appellant was "to be placed on same route daily" for the five weeks beginning March 20, 2008 and that she should not work more than 40 hours a week. He noted on April 29, 2008 that he was requesting that appellant's light-duty work continue until she was transferred to another station or until she was no longer under his care or on medication. Appellant was doing fine working 40 hours a week, but still experienced symptoms of anxiety. If she worked more than 40 hours a week, she might suffer a relapse as overwork previously contributed to her work-related stress.

In March 13, 2009 letters, the Office requested additional factual and medical evidence from appellant and the employing establishment.

In a March 20, 2009 statement, Derek Hudson, manager of customer service,[2] stated that appellant was being accommodated by doing the same route everyday and by only being given eight hours of work each day. The accommodation request was to allow her to work on the same route, but Dr. Rogawski's request did not specify to put her on one route only. Mr. Hudson noted that some days the route appellant was assigned did not warrant eight hours of work, so she would be given additional duties on another route to fill eight hours, but this practice did not constitute overtime work.

Appellant's counsel at the time provided a March 9, 2009 statement that reiterated her prior statements. She submitted documents filed in connection with an Equal Employment Opportunity (EEO) complaint, leave records, excerpts from employee handbooks and the February 19, 2008 denial of her transfer request due to her unacceptable work record.

In a March 19, 2009 statement, appellant stated that she received a disciplinary letter on January 26, 2009 due to the events of January 15, 2009. She was unable to complete her route on January 15, 2009 due to verbal and mental abuse that contributed to her depression, anxiety and panic attack. Appellant's physician again provided a letter stating she was struggling with an eight-hour day and that it would be better if she were transferred.

In a July 28, 2009 decision, the Office denied appellant's claim finding that she did not establish any compensable employment factors. It found that appellant failed to establish that the 30 minutes of work on another route she was asked to perform was overtime or constituted a violation of her medical restrictions, that she was discriminated against when her transfer was denied, that her anniversary date was illegally changed or that Ms. Mercado screamed at her on January 15, 2009.

[2] It appears that Mr. Hudson later became a station manager.

Appellant disagreed with the July 28, 2009 decision and requested a review of the written record by an Office hearing representative. In an August 12, 2009 statement, she noted that her supervisors never denied she was sick and reiterated her version of the January 15, 2009 events. Appellant stated that her clock rings and her carrier auxiliary control forms proved she had an eight-hour route, such that she would have to do her eight-hour route and the 30-minute pivot. Regardless of whether she came in at 8:30 or 9:30 a.m., she would still have to do an eight-hour route.

The employing establishment was notified of the request for a review of the written record and provided statements dated October 19, 2009 from Mr. Hudson, Michael Boccio, the postmaster and Ms. Mercado. It also submitted an undated statement from Mr. Jackson. Mr. Boccio stated he did not talk with appellant on January 15, 2009 as she alleged and indicated that he was not aware of her diagnosis or medications. Mr. Hudson noted that, on occasion, he did tell Mr. Jackson to assign undertime to appellant, but that at no time was she assigned overtime. He was generally aware of appellant's work restrictions, but he was unaware that she was diagnosed with fibromyalgia. Ms. Mercado asserted that she did not shout at or otherwise harass appellant. She noted that appellant was not placed on an overtime pivot and that her clock rings did not establish her claims about overtime work. Ms. Mercado denied appellant's statement that she gave her overtime or that she admitted giving appellant overtime when she completed an EEO statement. She stated that appellant was not issued a predisciplinary letter, but rather was given a predisciplinary interview appointment request. Mr. Jackson stated that Mr. Hudson had advised him about the undertime on appellant's route, which he had to adjust accordingly. He stated the 30-minute pivot was undertime. Appellant was allowed to rack on other routes to bring her to an eight-hour day, but they could have required her to do more on the street. Mr. Jackson stated he did not recall Ms. Mercado yelling at appellant.

On October 21, 2009 appellant disagreed with the statements of Mr. Hudson, Mr. Boccio, Mr. Jackson and Ms. Mercado. She contended she had provided all necessary documentation to support her claim and that it should be approved.

In a November 20, 2009 decision, the Office hearing representative affirmed the July 28, 2009 decision. She found that appellant did not establish any of her claims with respect to error or abuse in administrative matters or with respect to harassment or discrimination.

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 his 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.[3] On the other hand, the disability is not covered where it results from such factors as an

[3] 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

With regard to personnel and administrative matters, the Board has held that these are generally related to the employment as functions of the employer rather than the work duties of the employee.[5] Generally, actions taken unrelated to the employee's regular or specially assigned work duties do not fall within coverage of the Act.[6] An administrative or personnel matter will be considered as a compensable factor where the evidence of record establishes error or abuse on the part of managers or supervisors.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[7] 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.[8]

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.[9] 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.[10]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of various employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act. The Board notes that appellant's allegations do not pertain to

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

[5] *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

[6] *See Donny T. Drennon-Gala*, 56 ECAB 469 (2005); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[7] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[8] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[9] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[10] *Id.*

her regular or specially assigned duties under *Culter*.[11] Rather, appellant has alleged that managers committed error and abuse with respect to administrative matters and that she was subjected to harassment and discrimination.

Appellant contends that on January 15, 2009 managers mishandled her work assignments and violated her medical restrictions by giving her more than eight hours of work to perform and having her work on a route other than her regular route, *i.e.* route 1421. She also claimed that managers subjected her to unfair disciplinary actions, wrongly denied leave and transfer requests and committed errors regarding her anniversary date at work.

Appellant's allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[12] Although the handling of such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[13] 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.[14]

The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to the alleged administrative matters. The employing establishment acknowledged that appellant had a medical restriction from working more than eight hours a day, but multiple statements from management show that her route was not a full eight-hour route and the 30-minute pivot she was assigned to work would not have been outside of her restriction from working more that eight hours a day. Management noted that appellant had to be assigned work tasks known as undertime work to build her route up to an eight-hour day. The evidence reveals that appellant arrived late to work on January 15, 2008 and there is no evidence that assigning her pivot work was error or against the recommended restrictions. Appellant did not provide adequate documentation to support her claim that she had to work more than an eight-hour route.

With respect to whether management violated a medical restriction when it had appellant work on a route other than her regular route, she has not submitted sufficient evidence to show that error or abuse occurred. In a March 18, 2008 report, Dr. Rogawski, an attending clinical psychologist, indicated that appellant was willing to be placed on her hold-down delivery route. He did not state, however, that there was any reason against appellant working on more than one

[11] *See Cutler supra* note 4.

[12] *See 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] *Id.*

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

route or a route other than her regular route.[15] Appellant also did not present evidence showing management error or abuse with respect to disciplinary actions, leave usage, transfer requests or her anniversary date at work.

Appellant also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. She claimed that Ms. Mercado shouted at her on January 15, 2009 and that Ms. Mercado and Mr. Jackson threatened to place her on emergency replacement status. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[16] 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.[17] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.[18] Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[19] She apparently filed an EEO complaint, but the record does not contain any determinations resulting from this complaint. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[20]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

[15] In a March 19, 2008 form report, Dr. Rogawski indicated that appellant was "to be placed on same route daily" for the five weeks beginning March 20, 2008. It is also uncertain whether this note contains a clear prescription against ever working on more than one route. Moreover, it relates to a period which is not the subject of the present claim.

[16] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

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

[18] *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).

[19] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[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, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 20, 2009 is affirmed.

Issued: November 22, 2010
Washington, DC

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

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

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