United States Department of Labor
Employees' Compensation Appeals Board

M.K., Appellant	)	
and	)	**Docket No. 10-352**
	)	**Issued: September 17, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Portland, ME, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2009 appellant filed a timely appeal from an October 22, 2009 merit decision of the Office of Workers' Compensation Programs. 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 established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 5, 2008 appellant, a 56-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) in which she alleged that, on December 3, 2008, the postmaster informed her that a fellow carrier wrote a letter to the employing establishment alleging that he was "in fear of his life" when he worked with appellant. The postmaster told her that she should discuss the issue with employee services, but also told her that he did not think there was anything to worry about. Appellant stated that she did not contact employee services

because she had work to finish. She returned to work and cased mail for "10 minutes" when she experienced a "sharp, stabbing" pain that "shot" from her shoulders, across her chest and "into [her] heart."

Appellant submitted a March 28, 2008 report in which Dr. Donald Woolever, Board-certified in family medicine, diagnosed "premenopausal status" and "preventative health care."

In a December 3, 2008 note, appellant described the events of that day. She alleged that she felt "blindsided" by the complaint letter. Appellant alleged that the thought of someone trying to "get me fired" made her "very nervous and scared." She alleged that she was "shaking and very upset about" the complaint letter. Appellant alleged experiencing a "shooting" pain that ran from her shoulder to her arm and into her chest that felt like "someone was trying to squeeze me in the chest area." She also alleged experiencing shortness of breath and difficulty breathing. Appellant reported seeking medical attention at a local emergency room.

Appellant submitted a December 3, 2008 report signed by Dr. Charles Humphrey, a Board-certified diagnostic radiologist, who reported that a computerized tomographic angiography as well as lateral and frontal radiographs of appellant's chest revealed no abnormality.

Appellant also submitted a report dated December 3, 2008 in which Dr. Douglas W. Nam, Board-certified in emergency medicine, presented findings on examination and diagnosed "atypical chest pain," "possible gastroesophageal reflux disease," and "possible esophageal spasms." Dr. Nam released appellant to work with no restrictions.

By letter dated December 16, 2008, the employing establishment controverted appellant's claim, citing the lack of evidence that any of its employees acted unreasonably and that appellant's supervisors were merely acting in an administrative capacity.

In a supplemental statement dated December 17, 2008, appellant described the events of December 3, 2008 and how it emotionally impacted her. She alleged that the complaining coworker told another of her coworkers that it was not his fault that appellant was "having a nervous breakdown." Appellant considered this statement "another slam." She alleged that a meeting had been scheduled to address the substance of this complaint letter but was canceled due to weather. Appellant stated that, since learning of the complaint letter, she has contacted the employing establishment concerning the complaint letter. She stated that her repeated requests for a copy of the complaint letter were denied, a fact that she alleges is a source of "duress."

Appellant also described an encounter with Bob Glover, the complaining coworker, during which he, allegedly disappointed by the fact that due to absences in the department his workload was increased, "yelled" at appellant and called her a "know it all." She noted that "my body did not take well to Bob's inappropriate actions."

By decision dated June 11, 2009, the Office denied the claim because appellant had not demonstrated that compensable employment factors caused a medically-diagnosed condition.

Appellant submitted statements from coworkers and a personal statement dated July 7, 2009 in which appellant reviewed the events of December 3, 2008 and alleged that this incident caused "severe workplace hostility" as well as "immediate emotional and physical harm."

On July 7, 2009 appellant requested review of the written record.

By decision dated October 22, 2009, the Office affirmed its June 11, 2009 decision because appellant had not established the required compensable employment factors.

LEGAL PRECEDENT

Workers' compensation law is not applicable 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. When the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[2]

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.[3] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[4] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[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

[1] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[3] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990*), reaff'd on recon.*, 42 ECAB 556 (1991).

[4] *See William H. Fortner*, 49 ECAB 324 (1998).

[5] *Ruth S. Johnson*, 46 ECAB 237 (1994).

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

employment, it 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]

ANALYSIS

The Board finds that the evidence of record establishes that on December 3, 2008 appellant was informed by the postmaster that employee services wanted to discuss a coworker's letter with her. According to appellant the coworker's letter stated that he feared for his life because of appellant. She did not meet with the postmaster or employee services and she did not actually see the letter in question. Essentially, the facts establish that appellant reacted to notice by the postmaster that the letter was being investigated. The Board has previously held that as an investigation is generally related to the performance of an administrative function of the employer and not to the employee's regular or specially assigned work duties, it is not a compensable factor of employment unless there is firm evidence that the employer erred or acted abusively in the administration of the matter.[8] The evidence does not establish that the employer erred or acted abusively in this matter, the postmaster in fact told appellant that she had" nothing to worry about." Appellant's perceptions and feelings alone are not compensable.[9]

Appellant also attributed her condition to the employing establishment's refusal to provide her a copy of the complaint letter. The record indicates that meetings to discuss the letter with employee services were postponed due to inclement weather. Appellant has not submitted any evidence to the record that her inability to obtain a copy of the letter constituted error or abuse on part of the employing establishment.

The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. Verbal altercations and difficult relationships with supervisors and coworkers, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will be covered under the Act.[10] A raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse.[11]

While appellant generally alleged that Mr. Glover "yelled" at her, called her a "know it all," and that "my body did not take well to Bob's inappropriate actions," these allegations do not rise to the level of verbal abuse. She also has not submitted any evidence supporting her

[7] *Id*.

[8] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[9] *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[10] *Cyndia R. Harrill*, 55 ECAB 522 (2004); *Beverly R. Jones*, 55 ECAB 411 (2004).

[11] *Karen K. Levene*, 54 ECAB 671 (2003).

allegation that Mr. Glover verbally attacked her. Without such corroborating evidence, appellant has failed to establish that the event actually occurred as alleged.[12]

As appellant failed to establish any compensable factors of employment, the Office properly denied her claim.[13]

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 22 and June 11, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 17, 2010
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

[12] *See Linda J. Edwards Delgado*, 55 ECAB 401 (2004).

[13] Appellant notes in her appeal that she simply wants her hospital bill paid. As she has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).