United States Department of Labor
Employees' Compensation Appeals Board

N.G., Appellant	)	
and	)	**Docket No. 10-353**
	)	**Issued: January 21, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Tom McMenamy, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2009 appellant filed a timely appeal from a September 30, 2009 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 appeal.

ISSUE

The issue is whether appellant established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 16, 2009 appellant, a 46-year-old clerk, filed a traumatic injury claim alleging an emotional condition following a confrontation with her supervisor, Senior Clerk Karen Hines, during a February 11, 2009 meeting. In a statement accompanying the claim, she stated that the meeting was convened because Ms. Hines had threatened her on January 29, 2009 and had engaged in a pattern of harassment and abusive behavior towards her. Appellant asserted that management failed to resolve the threat posed by Ms. Hines and had threatened

disciplinary action during the meeting if she and Ms. Hines caused another incident. Management warned both employees that they would be transferred if another incident occurred.

In a February 16, 2009 report, Dr. Regina Neuman, an internist, excused appellant from work from February 16 to 19, 2009 due to an acute reaction to stress and elevated blood pressure.

In a statement of record, Nancy D'Andrade, a coworker, noted that she was outside helping a customer at her window on January 29, 2009 when she heard Ms. Hines and appellant arguing loudly. Ms. Hines yelled at appellant and accused her of leaving the worksite early when she was not on union business and of telling management that she was not always in uniform at the required times. She told appellant to "get a life" and that everything appellant was doing "was going to get back to her." Appellant stated that Ms. Hines behaved in an aggressive manner.

In a February 17, 2009 statement, Neysa Coleman, a union vice-president, noted that she was present at a February 11, 2009 mediation, which was scheduled by station manager Nyesha Hall to resolve appellant's allegation that Ms. Hines had threatened her while on duty. Ms. Hines spoke first, was very upset and enraged and began to rant about how appellant disrespected her and failed to notify her when appellant left the workplace during work hours. She stated that the January 29, 2009 incident occurred because appellant was short in her stock count. Ms. Hines accused appellant of being petty when she complained to management about her not being in uniform. She alleged that appellant ate and talked on her cell phone while stationed at the customer window. Ms. Coleman noted that, when appellant began to state her side of the story, Ms. Hines interrupted her. Appellant denied the allegations by Ms. Hines. She stated that, on January 29, 2009, Ms. Hines called appellant into her office, became very upset and yelled at her. Appellant walked back to the customer window, at which time Ms. Hines ran behind her shouting that she would "get hers." Ms. Coleman stated that appellant felt threatened by Ms. Hines and did not feel safe. She advised that Ms. Hines yelled at the end of the February 11, 2009 meeting denying any threat but told appellant that she was going to "get hers."

Ms. Coleman noted that Ms. Hall advised both clerks that management instructed her to put both clerks out and turn the case over to the inspection service; but, Ms. Hall preferred to seek a resolution between the employees. She stated that Ms. Hall did not address the employer's zero tolerance policy for verbal or physical altercations, advised that eating and talking on the cell phone would not be permitted at the window and that appellant would notify Ms. Hines when she left the station. Ms. Coleman instructed both clerks to be courteous to each other and to work together. She stated that appellant felt as if nothing had been resolved and felt threatened by Ms. Hines.

On April 7, 2008 Ms. Hines asked the employer for a transfer to another post office due to hostility and tension with appellant and Ms. D'Andrade. She worked along with appellant until Ms. D'Andrade began work at their station; but, appellant and Ms. D'Andrade began to whisper with each other in her presence and generally behaved in an inappropriate and disrespectful manner toward her. Ms. Hines stated that appellant filed several complaints against her in recent years.

On February 20, 2009 the employing establishment controverted the claim. It stated that appellant did not support her allegation that she was threatened on February 11, 2009.

In a statement of record, appellant reiterated that Ms. Hines had threatened her on January 29, 2009 by stating "you're gonna get yours, I'm going to see to it." She notified management of the alleged threat that day and provided a statement to management when she returned to work on February 9, 2009. Ms. Hall spoke to appellant and Ms. Hines on February 9, 2009, after which Ms. Hines again followed appellant and threatened her in the same manner. Appellant stated that Ms. Hall then scheduled the February 11, 2009 mediation to resolve the acrimony between the women. She asserted that she construed Ms. Hall's warnings about the consequences of future misconduct as a threat by management in response to her complaint that it had not enforced the zero-tolerance policy toward Ms. Hines. Appellant developed a headache and felt unable to handle postal funds at the window. She sought medical treatment from a treating physician and from a psychologist, who diagnosed adjustment disorder with anxiety.

In form reports of February 23 and March 3, 2009, Dr. Neuman indicated that appellant had hypertension and elevated blood pressure, aggravated by acute stress at work, which resulted in total disability as of February 11, 2009. In a February 5, 2009 report, she asked that appellant be excused from work due to a work-related illness from January 30 to February 8, 2009. On March 24, 2009 Dr. Neuman stated that she had treated appellant for hypertension for many years. On February 12, 2009 appellant told her of a threat by a coworker and that she was under stress at work. Dr. Neuman addressed appellant's hypertension, noting that an elevation of blood pressure seemed to correlate to the acute stress appellant experienced at work. She referred appellant for psychological counseling.

In a March 18, 2009 report, Dr. Ursula Martin, a degreed social worker, stated that she treated appellant on February 23, 2009 for adjustment disorder with anxiety. She advised that appellant experienced anxiety due to a conflict and verbal interaction with a coworker. Dr. Martin believed that appellant's condition was improving and that she could return to work by April 1, 2009.

In a March 24, 2009 statement, Ms. Hall advised that appellant had asked to speak with her on February 9, 2009 regarding problems with Ms. Hines. Appellant believed Ms. Hines was subjecting her to verbal harassment. Ms. Hall scheduled the mediation meeting for February 11, 2009 in order to resolve the issue. She stated that both employees were very upset at the meeting. Ms. Hall advised that Ms. Hines acknowledged stating that appellant would get what was coming to her and that what comes around goes around. After listening to both employees, Ms. Hall informed them that she would not tolerate this continuing behavior and expected them to work with each other and conduct themselves in a professional manner.[1]

[1] In a March 23, 2009 statement, the worksite manager, Renee Davis, stated that she advised appellant and Ms. Hines on February 11, 2009 that conflicts between them were avoidable if they respected each other. Appellant was the worksite's union steward charged with representing Ms. Hines in the event she desired to file a grievance. Ms. Davis stated that management acted to reduce the likelihood of future conflicts between the two parties by moving appellant to a service window located away from that of Ms. Hines.

By decision dated March 31, 2009, the Office denied the claim for an emotional condition, finding that appellant failed to establish fact of injury.

On April 30, 2009 appellant requested an oral hearing that was held on August 18, 2009. She filed a grievance against management for failure to enforce the zero-tolerance policy and against Ms. Hines for threatening conduct. Appellant asserted that Ms. Hines had a history of difficulty interacting with coworkers.

In a September 30, 2009 decision, an Office hearing representative affirmed the March 31, 2009 decision. While appellant established a contentious relationship with Ms. Hines, the senior clerk, which culminated in the February 11, 2009 mediation meeting, the evidence did not establish a compensable factor of employment.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[2] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[3]

Where 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.[4] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[5]

The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.[6]

[2] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[3] *See Ruth C. Borden*, 43 ECAB 146 (1991).

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

[5] *Id.*

[6] *See David C. Lindsey*, 56 ECAB 263 (2005). The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse. *Joe M. Hagewood*, 56 ECAB 479 (2005).

ANALYSIS

Appellant did not attribute her emotional condition to her regular or specially assigned duties under *Cutler*. Rather, she attributed her condition to a verbal exchange with Ms. Hines on January 29, 2009 and a subsequent meeting between the employees on February 11, 2009. Appellant's primary allegation is that she was threatened with physical harm by Ms. Hines and that the employer did not take adequate action. The Board finds that appellant did not establish a compensable factor of employment in this regard.

The record establishes that Ms. Hines had a meeting with appellant on January 29, 2009, concerning leaving the worksite early and of advising management of Ms. Hines' attire. Appellant exited the office and alleged that Ms. Hines followed her, yelling threats against her. Ms. D'Andrade noted that Ms. Hines told appellant to "get a life" and that what appellant did would "get back to her." Ms. Hall, the station manager, met with the two employees on February 11, 2009 where Ms. Hines attributed the January 29, 2009 incident to a shortage in appellant's stock count. Ms. Hines acknowledged that she told appellant that she was being petty and that she would "get hers." Ms. Hall instructed both employees that she preferred they resolve the matter and to be courteous in the future. She warned both employees as to their conduct and that such continued behavior could lead to their removal. The Board has recognized the compensability of verbal abuse as a compensable work factor but not every statement uttered in the workplace will give rise to compensability.[7] Appellant alleged that her coworker spoke to her abusively and uttered verbal threats of harm against her. While she may have felt uncomfortable or been offended by the tone of Ms. Hines, the Board finds that Ms. Hines did not threaten harm or engage in verbal abuse.[8] A claimants own feeling or perception that a form of criticism or disagreement with a supervisor is unjustified, inconvenient or embarrassing does not give rise to coverage under the Act.[9]

The Board finds that appellant has failed to submit sufficient evidence to establish that Ms. Hines otherwise engaged in harassment, as alleged. Appellant's assertions that Ms. Hines mistreated her and maintained a hostile workplace for a year prior to the January and February 29, 2009 incidents are unsubstantiated. She alleged that Ms. Hines made derogatory, bigoted remarks against her and other coworkers and treated her in a demeaning, condescending manner, embarrassing her and causing her humiliation. However, appellant did not submit sufficient evidence to establish her allegations as to time, place, what was said or of any witnesses to any specific incident.[10] As such, appellant's allegations constitute generally stated assertions of dissatisfaction with a certain superior at work which do not establish her

[7] *David W. Shirey*, 42 ECAB 783 (1991).

[8] *See V.W.*, 58 ECAB 428 (2007); *Michael A. Deas,* 53 ECAB 208 (2001); *Denis M. Dupor*, 51 ECAB 482 (2000).

[9] *Michael A. Deas, supra* note 8. "I know which way you walk" and "kick his butt" were found not to be threats of physical harm or verbal abuse.

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

allegations.[11] Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[12] Ms. Hines denied appellant's allegations that she was treated unfairly or subjected her to harassment. Appellant provided no corroborating evidence or witness statements to establish that the statements actually were made or that the actions actually occurred.[13] Ms. Hines denied that she had a personal agenda to harass or intimidate appellant or terminate her from her position. Appellant has not established a compensable employment factor under the Act in this respect.

The Board finds that the evidence of record does not establish that the administrative and personnel actions taken by management were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[14] Appellant has not presented sufficient evidence that the Ms. Hall acted unreasonably or committed error with regard investigating the matter, holding the mediation meeting or of verbally warning each employee that further such conduct would not be accepted in the workplace.

Regarding appellant's allegation that she developed stress due to insecurity about maintaining her position, the Board has held that a claimant's job insecurity is not a compensable factor of employment.[15] Appellant failed to establish error or abuse with regard to her allegation that Ms. Hall's warning regarding the consequences of future conduct constituted a threat by management in retaliation to her allegation that it had not enforced its zero-tolerance policy toward Ms. Hines.[16] Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.[17] Accordingly, appellant has presented insufficient evidence with regard to these incidents.

[11] *See Debbie J. Hobbs*, *supra* note 2.

[12] *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

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

[14] *See Alfred Arts*, 45 ECAB 530 (1994).

[15] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

[16] The Board notes that appellant provided no documentation to support her allegation that management was forcing her, in her capacity as shop steward, to represent Ms. Hines against herself in the grievance appellant filed. While Ms. Davis did indicate in her March 23, 2009 statement that appellant and Ms. Hall needed to get along because appellant was the shop steward charged with representing her in union matters, appellant has produced no evidence that management sought to have appellant act contrary to her own interests in the grievance she filed against Ms. Hall. The Board notes that, in general, union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty. *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

[17] *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

The decision of the Office dated September 30, 2009 is set aside and the case is remanded for further action in accordance with this decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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