United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 10-1331**
	)	**Issued: January 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Guntersville, AL, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 14, 2010 appellant filed a timely appeal from a February 19, 2010 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 met her burden of proof to establish an emotional condition causally related to her federal employment.

FACTUAL HISTORY

On October 30, 2009 appellant, then a 40-year-old sales associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained anxiety and depression as a result of a February 27, 2009 employment incident. Appellant stated that she was sexually assaulted by a coworker on that date.

In a letter dated October 30, 2009, appellant's postmaster stated that she had alleged a coworker put his hand on her head as she was bending over and attempted to pull her toward his

groin area. According to the postmaster, an investigation of the allegation was undertaken and there was nothing found to prove anyone guilty of anything.

On September 8, 2009 the postmaster advised that on February 27, 2009 appellant submitted a statement that she was sexually harassed by a coworker. Witnesses were interviewed on August 10, 2009. A supervisor, Toni McCay, heard appellant yell "Get your hands off of me" and the supervisor immediately went to investigate. Appellant alleged a coworker grabbed her by the head and pulled her toward his groin area. The supervisor told the coworker this behavior would not be tolerated and, if he did it again, his employment would be terminated. The coworker stated that on February 27, 2009 his hands were cold and he touched the back of appellant's neck, causing her to tell him to keep his hands off of her. He denied attempting to pull appellant's head toward him, and stated that he only touched her as a joke.

In an undated statement, Supervisor McCay stated that she heard appellant yell "keep your hands off me." The supervisor told the coworker he had no right to put his hands on anyone. One hour after the incident, she again spoke to the coworker and told him that appellant alleged he tried to pull her head toward his groin. The coworker replied, "yeah, but we do that kind of stuff all the time, we joke around."

With respect to medical evidence, appellant submitted a December 2, 2009 report from Dr. Charles Larson, a family practitioner, who stated that appellant was being treated for stress, anxiety and insomnia caused by an "unfortunate encounter" with a coworker in February. Dr. Larson advised that appellant should remain off work. The record also contains a report from a licensed counselor.

By decision dated December 22, 2009, the Office denied the claim for compensation. It found the factual evidence was insufficient to establish that the touching incident occurred as alleged, as there was insufficient evidence to establish appellant was sexually assaulted by the coworker.

Appellant requested reconsideration and submitted additional statements from coworkers indicating she appeared to have been adversely affected by the employment incident. In a January 5, 2010 report, Dr. Larson indicated appellant would return to work on January 7, 2010.

In a February 19, 2010 decision, the Office reviewed the case on its merits and denied modification of the December 22, 2009 decision.

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.[1] This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[2] If a compensable work

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

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

factor is established, the claimant must submit rationalized medical evidence on causal relationship between a diagnosed condition and the compensable work factors.[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]

ANALYSIS

The Office denied appellant's claim finding that a compensable work factor was not substantiated by the record. It found that she did not establish a sexual assault or sexual harassment. A claimant does not have to establish sexual harassment as defined by the Equal Employment Opportunity Commission or other agency, or that a crime was committed.[5] Appellant alleged that an incident occurred on February 27, 2009 involving an unwanted touching by a coworker. She promptly reported the incident to a supervisor.

It is well established that unwanted physical contact may support a claim for compensation.[6] The record establishes that a coworker touched appellant on the back of her head or neck. The coworker admitted to touching appellant with cold hands, and a supervisor heard appellant yell that the coworker should keep his hands off her. The statement from Supervisor McCay was that, one hour after the incident, she described appellant's allegation, and the coworker appeared to acknowledge the incident as alleged, describing it as a joke.

The Board finds the evidence of record is sufficient to establish a compensable work factor. The record supports unwanted physical contact on February 27, 2009. Having established a compensable work factor, the issue is whether the medical evidence establishes a diagnosed condition causally related to the compensable work factor.

As noted, it is appellant's burden of proof to submit the necessary evidence to establish the claim. In this case, the medical evidence of record is of limited probative value. Dr. Larson

[3] *M.D.,* 59 ECAB 211 (2007) (a rationalized medical opinion is based on complete factual and medical background and supported by rationale explaining the relationship between the diagnosed condition and the compensable employment factor).

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

[5] *See Michael A. Deas*, 53 ECAB 208 (2001).

[6] *See Alton L. White*, 42 ECAB 666 (1991); *see also Mary J. Summers*, 55 ECAB 730 (2004); *Alice F. Harrell*, 53 ECAB 713 (2002); *Donna J. DiBernardo*, 47 ECAB 700 (1996).

referred briefly in a December 2, 2009 report to an "unfortunate encounter" with a coworker, without providing a complete factual or medical history. In addition, there is no rationalized medical opinion on causal relationship between a diagnosed condition and the work factor. The report from a licensed counselor is of no probative value as he is not a physician under the Act.[7] The Board accordingly finds that appellant did not meet her burden of proof to establish an emotional condition due to the touching incident.

CONCLUSION

The Board finds that a compensable work factor is substantiated, but the medical evidence does not establish a diagnosed condition causally related to the accepted incident at work.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 19, 2010 and December 22, 2009 are affirmed, as modified.

Issued: January 18, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[7] Under 5 U.S.C. § 8101(2) the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as define by State law. There was no evidence that the licensed counselor is a physician under the Act and, therefore, the report is not considered probative medical evidence. *R.M.*, 59 ECAB 690 (2008).