United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	**Docket No. 11-606**
	)	**Issued: January 5, 2012**
U.S. POSTAL SERVICE, NORTH TEXAS PROCESSING & DISTRIBUTION CENTER, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 13, 2011 appellant timely appealed the October 7, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her emotional condition claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 sustained an emotional condition in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.[2] On April 25, 2008 appellant, then a 29-year-old custodian, filed an occupational disease claim (Form CA-2) for stress, depression, anxiety and pregnancy-related complications. She claimed discrimination and retaliation based on her sex and pregnancy. The employment incidents that reportedly caused or contributed to appellant's condition occurred between September 14 and October 15, 2007.

On September 14 and 17, 2007 appellant was confronted by management for not having her maintenance radio.[3] There was a question as to whether she had misplaced her radio or if someone else had mistaken it for their own. Appellant claimed that her assigned radio was not lost, but was being repaired. She considered the September 14 and 17, 2007 employment incidents a form of harassment because management should have known about her radio situation.

Appellant also identified a September 18, 2007 incident involving Steven Wright, a supervisor, who she claimed told her that some managers wanted her escorted out of the facility because she was wearing short pants. She stated that she wore maternity pants for a few months, which were one to two inches above the ankle. Mr. Wright did not escort appellant from the building, but instead told her to try to wear longer pants in the future. The employing establishment advised that it was a safety issue and that maintenance workers were required to wear long pants, not Capri pants, so as to avert potential accidents to exposed skin on the legs.

On October 1, 2007 Mr. Pittman observed appellant casually sitting at one of the break tables nonchalantly thumbing through a magazine. Because appellant's tour had begun just 45 minutes earlier, he believed that it was too early for her to be on break sitting around reading magazines and being nonproductive. Mr. Pittman then contacted her supervisor, Daryl Looney and informed him of what he observed. He later noticed that appellant appeared upset with Mr. Looney.

Regarding the October 1, 2007 incident, appellant claimed that she experienced difficulty breathing so she went to the annex to catch her breath before cleaning the restrooms. She reportedly had submitted a light-duty request in July 2007 that allowed her to rest, which the previous management honored.[4] Appellant claimed that Mr. Pittman essentially harassed her on October 1, 2007 for stopping to catch her breath. She stopped work later that afternoon and went to the employee health unit where she was treated for hyperventilation. Appellant also complained of mild abdominal pain.

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[2] Docket No. 10-600 (issued September 13, 2010).

[3] The September 14, 2007 incident involved Gary Russell, a supervisor, and the September 17, 2007 incident involved maintenance operations manager, Thomas A. Pittman.

[4] Mr. Pittman was new to the facility, having begun work there only four weeks prior to the October 1, 2007 incident. The record includes light-duty request forms dated June 28 and July 26, 2007, which outlined several pregnancy-related temporary physical limitations. However, the forms did not provide any information regarding the frequency of breaks.

Appellant alleged that, when she tried to return to work on October 15, 2007, the employing establishment retaliated against her by refusing to allow her to work light duty. The employing establishment reported that there was no light-duty work available for her at that time.

Mr. Pittman explained that during her absence appellant had been instructed to obtain updated medical information such that management could properly assess her work restrictions and determine the availability of work. When appellant returned to work on October 15, 2007 she did not provide the requested medical information and she was sent home.[5]

OWCP denied the claim by decision dated June 16, 2008. It found that appellant did not substantiate her allegations of harassment or discrimination on compensable factors.

Appellant subsequently requested reconsideration. She submitted additional evidence, including several witness statements regarding the October 1 and 15, 2007 employment incidents.[6] Appellant also submitted statements from two union representatives, Stephen Mack and Cathy Wesley. Mr. Mack's November 16, 2008 statement pertained to interviews he conducted in September 2007 with Mr. Russell and Mr. Wright. Ms. Wesley provided a December 4, 2008 statement about what transpired in the health unit on October 1, 2007.

In a decision dated October 1, 2009, OWCP denied appellant's request for reconsideration without merit review.

The Board set aside OWCP's October 1, 2009 nonmerit decision and remanded the case for further merit review. The Board found that appellant submitted relevant and pertinent new evidence with her request for reconsideration, thereby warranting further review of the merits of her claim. The Board's September 13, 2010 decision is incorporated herein by reference.

By decision dated October 7, 2010, OWCP found that the incidents appellant identified were administrative in nature and noncompensable. It found insufficient evidence of error or abuse on the part of her employer.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric

[5] When she returned to work on October 15, 2007, appellant was asked to attend a meeting with a "threat assessment team." She has not alleged that meeting with the threat assessment team on October 15, 2007 either caused or contributed to her claimed emotional condition.

[6] Raymond Horsburgh, Michael R. Wood, Mike Creech, and Timothy Nguyen provided statements regarding the October 15, 2007 threat assessment meeting and appellant's desire to be accompanied by a union representative. Jonathan Masood, Jr., Alvaro Garcia, and Will Stark commented about the October 1, 2007 incident when Mr. Pittman observed appellant taking an unscheduled break.

disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[8] Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[9]

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.[10] Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.[11] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[12]

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[13] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.[14]

ANALYSIS

Appellant claimed to have been harassed and subjected to discrimination based on her gender and maternity status. She identified employment incidents where she was questioned about her maintenance radio, advised about appropriate workplace attire for maintenance and unauthorized custodians breaks and denied light-duty work. Apart from those identified employment incidents, appellant did not attribute her claimed emotional condition to performing

[7] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[8] *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

[9] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[10] *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

[11] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

[12] *Thomas D. McEven*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[13] *Kathleen D. Walker*, *supra* note 7.

[14] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

her regular or specially assigned duties. She has not implicated a compensable employment factor under *Cutler*.[15]

All of the employment incidents appellant identified are administrative in nature. As such, she must demonstrate error or abuse on the part of her employer in order for these administrative matters to be compensable under FECA.[16]

On September 14 and 17, 2007 appellant was questioned about her maintenance radio. Mr. Pittman explained that maintenance workers were expected to maintain communications during their respective tours utilizing radios provided them. Appellant claimed that her assigned radio was neither lost nor missing, but was instead being repaired. She considered the repeated inquiries from Mr. Russell and Mr. Pittman harassment because management should have known about her radio situation.

On September 18, 2007 appellant took exception to Mr. Wright's comments regarding the capri pants she wore that day. She characterized them as "maternity pants" that were one to two inches above the ankle, which she reportedly had been wearing for a few months. Appellant noted that Mr. Wright told her to "try to have longer pants tomorrow." The employing establishment characterized it as a safety issue and noted that maintenance workers were required to wear long pants so as to avert potential accidents to exposed skin on the legs.

On October 1, 2007 Mr. Pittman observed appellant at one of the break tables reading a magazine. He noted that her tour had started just 45 minutes earlier and that it was too early for her break. Mr. Pittman reported what he observed to appellant's supervisor, Mr. Looney, who in turn spoke to her. Appellant claimed that she was short of breath and was taking a break before moving on to her next task. She reportedly submitted a light-duty request in July 2007 that allowed her to rest, which the previous management honored. Appellant claimed that Mr. Pittman essentially harassed her for stopping to catch her breath. Neither the June 28 nor July 26, 2007 light-duty request forms provided any information regarding the frequency of breaks required due to appellant's pregnancy.

The final incident that allegedly contributed to appellant's claimed condition was the employing establishment's refusal to allow her to return to work on October 15, 2007 without proper medical documentation. While appellant obtained an October 12, 2007 light-duty request form from her physician, she did not provide this to her employer until October 17, 2007. That statement of Ms. Wesley noted only that she was called to the medical unit in October 1, 2007 and saw appellant prior to her husband arriving. Mr. Mack noted a September 2007 interview concerning a missing radio and appellant's attire. Neither statement is sufficient to establish error nor abuse by her supervisors. Neither Mr. Mack nor Ms. Wesley provided specific details sufficient to establish error by appellant's supervisors.

As noted, the incidents of September and October 2007 identified by appellant constitute administrative matters. Assigning work and monitoring performance are administrative

[15] *Supra* note 9.

[16] *David C. Lindsey, Jr., supra* note 11.

functions of a supervisor.[17] The manner in which a supervisor exercises his discretion falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[18] The incidents involving appellant's maintenance radio, proper workplace attire, unauthorized breaks and being required to submit proper medical documentation all represent administrative matters. While she may believe that she was singled out due to her gender and/or maternity status, she has not submitted sufficient evidence to establish error or abuse on the part of the employing establishment.

As the above analysis demonstrates, appellant has not established any compensable employment factors. Moreover, she did not specifically implicate her regular or specially assigned duties as a factor in her claimed emotional condition. Because appellant failed to establish a compensable factor of employment, OWCP properly denied her claim without addressing the medical evidence of record.[19]

CONCLUSION

Appellant failed to establish that she sustained an emotional condition in the performance of duty.

[17] *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

[18] *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

[19] *Garry M. Carlo, supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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