U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS M. McKINNON and U.S. POSTAL SERVICE,
POST OFFICE, Reading, Mass.

Docket No. 97-267; Submitted on the Record;
Issued November 27, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition while in the performance of duty.

On May 3, 1994 appellant, then a 38-year-old letter carrier, filed a notice of traumatic injury and claim alleging that she became stressed on May 2, 1994 due to the issuance of a letter of warning. Appellant submitted a supplemental statement in which she outlined the following as causative factors leading up to the issuance of the May 1994 letter: Mr. Rafferty and Mr. Boltas, her supervisors, began harassing her on March 3, 1994; Mr. Rafferty combined her relay mail and criticized appellant in front of others while she was on a 10 minute break; appellant's requests for overtime or assistance were constantly questioned; appellant was observed on her route and had supervisors walk her route an inordinate number of times during April 1994; a delivery analyst, Thomas Queen, suggested that changes be made to her route to help appellant's delivery of the mail which were not timely implemented; appellant was subjected to meetings with management without being allowed union representation; appellant was issued a letter of warning on May 2, 1994 for failure to perform her duties which was without just cause.

In a decision dated June 21, 1994, the Office of Workers' Compensation Programs denied appellant's claim for a traumatic injury on the grounds that there was no evidence that the employing establishment had erred or acted abusively in issuing the letter of warning. Appellant requested a hearing but later withdrew her request when she was advised by the Office that she could pursue an occupational disease claim based on the incidents identified.

On December 3, 1994 appellant filed an occupational disease claim alleging that she sustained stress due to harassment, intimidation and discrimination. Appellant referred to her prior supplemental statement to provide the identified causative factors. She later submitted an addition statement in which she identified additional factors as causes of her stress: appellant was issued two additional letters of warning on November 1 and 3, 1994 which were rescinded at

the step one meeting between management and the union; her May 2, 1994 letter of warning was also rescinded at step three of union/management negotiations; she was told to address improperly sorted mail which was to be forwarded the next day by Mr. Boltas; however, he failed to inform the supervisor who was on duty the next day and therefore appellant was questioned about her work unnecessarily; she was questioned about her delivery point sequence (DPS) mail by Mr. Zapach without cause; and she found out her route was being divided as management had found it to be inefficient by other carriers questioning her about aspects of her route prior to being informed of the proposed action by her supervisor.

In a decision dated June 13, 1995, the Office denied appellant's occupational disease claim on the grounds that her injury did not occur within the performance of duty as none of the identified factors were compensable under the Federal Employees' Compensation Act. By decision dated July 19, 1995 and finalized on July 22, 1996, an Office hearing representative affirmed the Office's June 13, 1995 decision.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not established her emotional condition as arising in the performance of duty.[1]

The initial question presented in an emotional condition claim is whether appellant has substantiated compensable factors of employment contributing to her condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Act. Where 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 Act. On the other hand, the disability is not covered where it results from factors such as an employees fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[2] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[3] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on October 8, 1996, the only decision before the Board is the Office's July 22, 1996 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

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

[3] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[4]

Appellant has alleged several incidents which she asserts constituted harassment or discrimination. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicate disputes and incidents are established as arising in and out of the performance of duty.[5] Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.[6]

Appellant alleges that her supervisors' reviews of her work, including observing of her route, walking her route and questioning her need for overtime or assistance to perform her duties were not necessary and therefore were a form of harassment. However, these are administrative matters that the employing establishment has established were appropriate, as appellant requested an unusual amount of overtime or assistance, and are not compensable since appellant has not established error or abuse by the employing establishment. Similarly, management's requests for information concerning why appellant was working on forwarded mail in January 1995 due her prior supervisor's failure to advise the supervisor on the next shift that this work was put off until the next day and for an explanation of how the DPS mail was processed and management's division of route without prior notification are administrative requests for information, without evidence of error or abuse. Consequently, these are not compensable factors under the Act.

Appellant alleged that she was improperly issued letters of warning on May 2, November 1 and 3, 1994 and that improper supervisory meetings took place without her having union representation. Appellant filed an Equal Employment Opportunity (EEO) complaint in response to the issuance of her May 2, 1994 letter of warning. This complaint was settled by settlement agreement signed by the Postmaster, John Driscoll and appellant on June 2 and 3, 1994, respectively. Appellant withdrew her EEO complaint based on stipulations which included management's promise to implement the suggestions of the delivery analyst as soon as administratively possible, to treat appellant the same as other employees with respect to street supervision and overtime requests and permit appellant to have union representation in accordance with the union contract. The agreement notes, however, that settlement was entered solely to resolve appellant's allegations and not to be construed as an admission of wrong doing or discrimination on the part of the employing establishment. As such, this evidence is insufficient to establish administrative error on the part of the employing establishment or to establish harassment of appellant.[7]

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

[5] *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[6] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[7] *See Minnie L. Bryson*, 44 ECAB 713 (1993).

As appellant has failed to establish a compensable factor of her employment, the Office properly denied her claim for compensation.

The decision of the Office of Workers' Compensation Programs dated July 19, 1996 and finalized on July 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 27, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member