

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANNIE I. COLUMBIA and U.S. POSTAL SERVICE,
POST OFFICE, Grand Junction, CO

*Docket No. 99-77; Submitted on the Record;
Issued April 21, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

On December 9, 1997 appellant, a clerk, filed a claim alleging that, she developed an emotional condition due to sexual harassment. The Office of Workers' Compensation Programs denied her claim by decision dated February 20, 1998 finding that she failed to establish fact of injury. Appellant requested reconsideration and by decision dated June 10, 1998, the Office modified its prior decision finding that appellant has established fact of injury, but failed to establish that she sustained an injury in the performance of duty.

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 concept 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 compensable. 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 to hold a particular position.¹

In this case, appellant attributed her emotional condition to actions by her supervisor, Bob Hazard. She alleged that he followed her, watched her and interrupted conversations. Mr. Hazard gave appellant direct orders. Appellant alleged that Mr. Hazard conducted an audit

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

of appellant's accounts in an open area in violation of the union contract. Vickie Clute, the postmaster, stated that Mr. Hazard conducted the audit in an appropriate place and manner. Appellant received official discussions, fact findings and investigative interviews. These actions constitute the administration of personnel matters by the employing establishment and Mr. Hazard.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²

In this case, appellant has alleged that the employing establishment and Mr. Hazard acted unreasonably in the administration of discipline, in conducting audits and performing supervisory functions. Both the employing establishment and Mr. Hazard denied abusive actions and appellant has submitted insufficient evidence to substantiate her allegations that the actions taken by the employing establishment were unreasonable. Therefore appellant has not established that these events constitute factors of employment.

Appellant alleged that she was denied her breaks, harassed regarding the timing of her breaks and denied the use of the telephone. Ms. Clute and Mr. Hazard stated that appellant was not denied breaks. Mr. Hazard stated that he did ask how much longer appellant's break was and that he had instructed her to limit the use of the telephone during her break for personal calls. Appellant has submitted no evidence in support of her allegations that the employing establishment either denied her work breaks or improperly restricted these breaks such that the restrictions rose to the level of error or abuse in an administrative or personnel matter.

Appellant made several other allegations regarding the methods by which the employing establishment and Mr. Hazard carried out administrative functions. She alleged on December 3, 1997, Mr. Hazard "snatched" a letter from her and instructed her to return to her case. Mr. Hazard stated that he asked to see the letter and instructed appellant to return to her work area. Appellant stated that Cindy Smith denied her union representation when conducting a fact finding regarding the allegations of sexual harassment regarding Mr. Hazard. Appellant submitted a form indicating that she was serving a seven-day suspension. She stated that the form was posted on the work area floor and that she had filed a grievance regarding this display. Appellant has submitted no evidence supporting that the employing establishment denied union representation. She has also not substantiated that the form was displayed inappropriately. Appellant has not established that the employing establishment acted unreasonably in carrying out supervisory and disciplinary actions. Therefore she has not established that these incidents constitute factors of employment.

² *Martha L. Watson*, 46 ECAB 407 (1995).

Appellant alleged Ms. Smith harassed her regarding the timekeeping procedures for union time. Ms. Clute stated that appellant was given an official discussion for the improper use of the union time form. Appellant submitted a statement from David J. Horton, saying that appellant had received conflicting instructions regarding the appropriate completion of the form for union time. Matters regarding leave³ are considered administrative in nature and will not give rise to a compensable factor of employment without error or abuse on the part of the employing establishment. Although appellant has submitted a statement indicating that the employing establishment erred in giving conflicting instructions regarding the completion of leave forms, there is insufficient evidence in the record to establish whether the employing establishment acted unreasonably as there is no evidence regarding what the conflicting instructions actually were.

Appellant stated that she gave Mr. Hazard a warning regarding sexual harassment. Ms. Clute stated that there was no evidence of sexual harassment. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁴ Appellant has submitted insufficient evidence in support of her allegations of harassment, sexual or otherwise, by Mr. Hazard.

As appellant has failed to substantiate a compensable factor of employment, she has failed to meet her burden of proof and the Office properly denied her claim for an emotional condition.

³ *Elizabeth Pinero*, 46 ECAB 123, 130 (1994).

⁴ *Alice M. Washington*, 46 ECAB 382 (1994).

The June 10, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 21, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member