

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWEN E. GREGORY and U.S. POSTAL SERVICE,
POST OFFICE, Montgomery, AL

*Docket No. 97-2264; Submitted on the Record;
Issued February 4, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On January 26, 1995 appellant, then a 45-year-old-clerk, filed a notice of occupational disease, alleging that she suffered depression and anxiety attacks due to her federal employment.¹

In a statement dated December 21, 1994, appellant alleged that the employing establishment never responded to her July 1991 application for supervisor training. Appellant stated that in February 1992 a supervisor discussed privileged information about one of her children with a coworker. Appellant stated that on April 13, 1992 the same supervisor denied her assistance with her job even though she had been told to request such help to avoid injury. She alleged that on January 21, 1994 she was required to work outside her job restrictions which involved standing only one hour. Appellant stated that on January 24, 1994 an employing establishment safety officer denied her the use of a chair pending proper medical documentation. She subsequently indicated that both her schedule and/or duties were changed on January 28 and 31, February 1, 5 and 28, and March 4, 1994. Appellant indicated that on March 18, April 29, August 22 and 24, September 13, November 29 and December 7, 1994 she suffered anxiety attacks, breathing problems, hoarseness or a "dizzy head" as a result of working in the nixie area and her fear of crossing the main mailroom. On May 13, 1994 appellant stated that she returned to work with new restrictions, but that her supervisor disputed whether she needed to work with a chair. Appellant stated that she became upset on May 16, 1994 when her supervisor, Red Rodgers, contested the physical limitations established by her physician. She indicated that on May 28, 1994 she noted a casual worker using a stool, yet she was required to present medical evidence to complete such light duty. She also noted that she was regarded as a

¹ On September 20, 1995 the Office of Workers' Compensation Programs accepted a separate claim for an aggravation of degenerative disc disease in appellant's right knee.

no-show for three safety training sessions she was never informed about. Appellant stated that on June 6 and 14, 1994 she was afraid of getting hurt while walking to and from her work site. She stated that on June 6, 1994 another clerk questioned her about signing in five minutes early. On June 13, 1994 appellant indicated that she felt like she was to blame for her requests for limited duty. On June 17, 1994 appellant indicated that she dreaded having her job assignments changed and that she was tired of that harassment. She stated that on June 17, 1994 a supervisor harassed her by changing her duty schedule by 30 minutes in order to accommodate her fear of walking to her work site during crowded shift changes. Appellant stated that on July 19, 1994 she informed her union president that her shop steward was harassing her. She indicated that on November 30, 1994 a coworker harassed her about a handicap tag on her car which granted her special parking privileges. Appellant further stated that her condition was worsened by a discussion with a coworker on December 7, 1994 concerning a payroll mistake. Finally, appellant stated that she was subjected to unnecessary remarks about her physical abilities.

On January 26, 1995 appellant wrote the employing establishment indicating that she felt harassed inasmuch as the employing establishment failed to accommodate her request for light duty away from the main mailroom.

On February 17, 1995 the employing establishment controverted the claim on the basis that appellant's emotional condition stemmed from her personal problems and her frustration at being denied a shift change to a daytime schedule. On March 10, 1995 the employing establishment stated that appellant's emotional condition stemmed from her own perceptions and feeling and that, therefore, they were not compensable.

On April 7, 1995 appellant stated that she could not release any information concerning the settlement of her sexual harassment suit and that her attorney could discuss the issues involved. Appellant stated that Pat Roberts, a union steward, complained that appellant was sitting too much and that he requested a copy of her work restrictions. She stated that she understood that this union steward went to management inquiring about her working location and hours. She stated that management later precluded her practice of starting her work shift five minutes early to account for her slow walking and directed that she begin her shift one-half hour earlier than other workers. Appellant reported that by this time her fear of injury was causing anxiety attacks and breathing problems. She stated that just walking across the floor to the nixie desk was bothering her and causing anxiety attacks. Appellant stated that on June 24, 1994 she became aware that Mr. Roberts was harassing her by hindering her bid for another job.

On July 21, 1994 Dr. David D. Harwood, a Board-certified psychiatrist and neurologist, indicated that appellant presented herself with panic-like episodes which she characterized as unexplained fears. Dr. Harwood stated that appellant presented him with documents indicating that her difficulties revolved around her inability to work secondary to orthopedic problems as well as a sexual harassment suit. He also noted that she was threatening to sue her labor union. He stated that appellant indicated that she feared her work setting and certain people, such as her supervisor and union steward. Dr. Harwood opined that appellant's symptoms sounded like panic attacks and were probably attributable to a mixed anxiety depressive disorder. He stated that he also suspected that appellant had a personality disorder characterized by histrionic and dependent features.

In a report received March 10, 1995, Dr. Daryl K. Hamblin, a clinical psychologist, diagnosed a depressive disorder. He opined that the condition was precipitated and aggravated by her employment. In this regard, Dr. Hamblin states that, because of her previous orthopedic injuries and the accommodations made to appellant to address these injuries, appellant now feels that her coworkers perceive her negatively. He further indicated that appellant's emotional condition stemmed from appellant's fear of reinjury and interpersonal relationship problems. On May 25, 1995 Dr. Hamblin stated that the principal driving factor of appellant's anxiety was her fear of reinjury. He stated that appellant's anxiety episodes were precipitated by her transfer to the nixie desk which is located near the main mailroom floor. Dr. Hamblin requested that appellant be assigned duties away from the main mailroom floor and the multiple dangers perceived by appellant there. On August 28 and December 5, 1995 Dr. Hamblin stated that he believed appellant's anxiety attacks were closely related to her previous injuries and her fearfulness of sustaining another injury. He stated that a return to the main mailroom would worsen her symptoms.

By decision dated January 24, 1996, the Office denied appellant's claim because the evidence failed to demonstrate that the claimed injury occurred in the performance of duty. In an accompanying memorandum, the Office determined that appellant failed to allege any compensable factors of employment.

On February 19, 1996 Dr. Hamblin again stated that appellant's condition was exacerbated by her fear of reinjuring herself if she was required to work any position requiring her to walk across the main mailroom floor.

On April 10, 1996 appellant requested reconsideration, contending that her allegations of harassment were not contradicted by the employing establishment.

By decision dated July 2, 1996, the Office denied modification of the prior decision.

On August 22, 1996 appellant alleged that on June 8, 1996 while working as a nixie clerk, she attempted to walk to the restroom, but found the aisle temporarily blocked. She indicated that she subsequently experienced a panic attack and fainted. Appellant's panic attack was confirmed by statements from coworkers Marcus Brown and Ella Johnson. Coworker Gabe Felder indicated that two or three hours prior to appellant's panic attack he struck the gates of two postgons with a metal pipe to free them. He stated that he later found out that appellant passed out on the floor.

On September 3, 1996 Dr. Hamblin stated that appellant's psychiatric difficulties began after her return to work on light duty following an employment injury. He stated that her adjustment to light duty has been problematic. Dr. Hamblin indicated that appellant had persistent fears of reinjury, especially when her duties required her to cross the main mailroom floor. Dr. Hamblin stated that appellant perceived this as dangerous due to her prior injuries and the rolling equipment present. He stated that this fear triggered her panic attacks. He stated that appellant's difficulties at work were compounded by a sexual harassment complaint she filed several years ago and by her frequent absences associated with her emotional and physical problems. Dr. Hamblin stated that appellant continued to experience anxiety attacks at work. He stated that he accompanied appellant to work and witnessed her anxiousness over crossing

the mailroom floor. He diagnosed anxiety and depressive disorders. Dr. Hamblin stated that these conditions were precipitated and aggravated by her job. He stated that her anxiety developed from fear of reinjury and how she believes she is perceived by others. He indicated that appellant was increasingly isolated from other employees as she avoided areas where employees congregate, especially the main mailroom floor. Dr. Hamblin stated that appellant perceived that coworkers and management disliked her due to the special treatment she received for her injuries.

On October 21, 1996 appellant requested reconsideration, contending that her emotional condition did not stem merely from perceptions and feelings, but was supported by Dr. Hamblin's opinion medically documenting that the condition was consequential to her prior employment injuries. She stated that the employing establishment provided her with limited-duty job offers on September 12, 1995 but failed to accommodate her fear of crossing the main mailroom floor and that this fear resulted in her anxiety and panic attacks.

By decision dated April 10, 1997, the Office denied modification of the prior decisions.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while 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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand the disability is not covered where it results from such factors as an employee's 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.³

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁴ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁵

In the present case, appellant alleged that her emotional condition stems from her fear of reinjuring herself while crossing the main mailroom floor. The Office previously accepted appellant's separate claim that she injured her right knee in the course of her federal employment. Appellant's allegation was addressed by Dr. Hamblin, a clinical psychologist, who also stated that appellant suffered an emotional condition stemming from her fear of crossing the main mailroom floor and reinjuring herself. Nevertheless, the Board notes that an employee's fear of future injury is not a compensable factor of employment.⁶

Appellant also alleged that her emotional condition resulted from appellant's perception that her supervisors and coworkers treated her in a negative manner due to the limited duty she worked as a result of her previous knee injury. Mere perceptions and feeling, however, are not compensable under the Act.⁷ Consequently, appellant's self-generated feelings that her supervisors and coworkers perceive her negatively, fail to constitute a compensable factor of employment.

Appellant further asserted that her emotional condition stemmed from the employing establishment's requirement that she work outside her physical limitations on January 21, 1994 and on other unspecified dates. Work outside of physical limitations may constitute a compensable factor of employment if substantiated by the record.⁸ In this case, however, appellant failed to provide any evidence that the employing establishment made her work outside her physical limitation. Therefore, she failed to substantiate that she was forced to work outside her physical limitations.

Appellant also alleged numerous incidents of harassment which she claims also impacted her emotional condition. In this regard, appellant asserted that she was harassed by having her job assignments and schedule changed numerous times. Appellant stated that she was harassed on April 13, 1992 when her supervisor denied her assistance in completing her duties. She further asserted that the employing establishment harassed her by denying her the use of a chair despite the fact that another worker was allowed to use one. Appellant stated that a coworker questioned her about signing in to work five minutes early and that the employing establishment later precluded this practice. She indicated that a shop steward harassed her and that she was subjected to unnecessary remarks about her physical abilities. Appellant stated that on November 30, 1994 a coworker harassed her about having a handicapped tag on her car and privileged parking. She also alleges that in February 1992 a supervisor discussed privileged information about her child to a coworker. Appellant further stated that she was harassed when the employing establishment failed to provide her with limited duty away from the main

⁵ *Id.*

⁶ *Joseph G. Cutrufello*, 46 ECAB 285 (1994); *Paul A. Clarke*, 43 ECAB 940 (1991).

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *Diane C. Bernard*, 45 ECAB 223 (1993).

mailroom floor. Finally, appellant and her physicians, Dr. Hamblin and Dr. Harwood, a Board-certified psychiatrist and neurologist, indicated that her condition stemmed from a sexual harassment lawsuit.

With regard to allegations of harassment, the Board has held that for harassment to give rise to a compensable disability under the Act, there must be evidence that the acts alleged or implicated did, in fact, occur. Mere perceptions of harassment are not compensable.⁹ In the present case, appellant listed numerous instances of harassment, but failed to support any of her allegations with evidence supporting her assertion that such harassment actually occurred. Without such corroborating evidence, appellant's assertions of harassment cannot be established as factual and they fail to constitute compensable factors of employment.

Appellant also asserted that her condition was related to numerous administrative matters carried out by the employing establishment. These included the employing establishment's failure to respond to her July 1991 application for supervisor training, her supervisor, Mr. Rodgers, contesting the physical limitations established by her physician on May 16, 1994, her being listed as absent for three safety training sessions, and discussions involving an employing establishment payroll mistake. The Board has held that reactions to actions taken in administrative matters are not compensable unless it is shown that the employing establishment erred or acted abusively and that the claimant must substantiate his allegations with probative and reliable evidence.¹⁰ In this case, appellant failed to provide any evidence of error or abuse on the part of the employing establishment in carrying out these administrative functions. Consequently, these factors of employment are not compensable.

Finally, appellant alleged that her emotional condition resulted from a June 8, 1996 work incident in which she suffered a panic attack and from September 12, 1995 limited-duty job offers from the employing establishment which failed to provide work within her physical restrictions. Inasmuch as appellant filed her notice of occupational disease on January 26, 1995 and these even occurred after that date, these incidents are not relevant to the present claim.

Accordingly, because appellant failed to establish any compensable factors of employment, she failed to meet her burden of establishing that she sustained an emotional condition while in the performance of duty.

⁹ *Joseph G. Cutrufello, supra note 6; Ruth C. Borden, 43 ECAB 146 (1991).*

¹⁰ *William E. Seare, 47 ECAB 663 (1996).*

The decisions of the Office of Workers' Compensation Programs dated April 10, 1997 and July 2, 1996 are affirmed.

Dated, Washington, D.C.
February 4, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member