

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JO ANN T. GUERRA and U.S. POSTAL SERVICE,
MIDTOWN PROCESS CENTER, Pueblo, CO

*Docket No. 98-973; Submitted on the Record;
Issued February 2, 2000*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On April 24, 1997 appellant, then a 33-year-old distribution clerk, filed an occupational disease claim alleging that she sustained an emotional condition which she attributed to factors of her federal employment. Appellant attributed her claimed emotional condition to: being denied a change in schedule and not being given a fixed schedule; being given a split schedule when she requested light duty; being issued a letter of warning for using emergency annual leave; being harassed and discriminated against and counseled by her supervisors regarding such matters as excessive talking on the work floor, the correct entrance to use and her job performance; being assigned less than full-time work; being sent home on one occasion after working just four hours although another employee was working overtime after working a full shift; being assigned tasks which she felt were not part of her job description; having her assignment from part-time status to regular status delayed three weeks; being yelled at by supervisor Denicia Reusche; being denied a request for administrative leave; being monitored closely by her supervisors; and being asked for more detailed documentation concerning her physician's statement releasing her to return to work.

In a report dated February 27, 1997, Dr. Robert E. Tonsing, a Board-certified psychiatrist, related that appellant was experiencing job stress. He related her complaint that the employing establishment harassed her and discriminated against her in that she was penalized for talking at work while others were not. Dr. Tonsing diagnosed a depressive disorder and stated:

“[Appellant] presents with ongoing difficulties at work. She gives a quite mixed message in terms of not really presenting ongoing nonwork-related psychiatric problems, but presents herself as feeling so overwhelmed and harassed and picked on at work that she cannot manage at this time. It is possible she has an underlying major mood disorder versus an adjustment-type reaction.”

By letter dated March 6, 1997, Dr. Tonsing stated that appellant should not return to work due to job stress.

In a statement dated June 27, 1997, Postmaster Robert Podio stated that the employing establishment normally granted requests for leave but requests were denied if the work load did not allow for additional time off. Mr. Podio stated that appellant, as a part-time flexible worker, was not guaranteed any particular number of hours, even if the regular workers had completed their shifts and were working overtime. He stated that when appellant's conversion to regular status was delayed due to a possibly incorrect date on the form, the form date was later corrected and she received back pay. Mr. Podio stated that if appellant was ever sent home while she was on light duty, it was probably because the work load was insufficient to keep her working and he noted that light-duty workers are not guaranteed a full shift. He stated that appellant often stopped working to talk to other employees and, if she was disciplined and others were not, it could be because the other workers were continuing to work while they talked. Mr. Podio stated that she was monitored closely because she sometimes did not perform her duties due to her talking to other employees and wandering around the building. He stated that appellant had been asked to submit additional information before she returned to work in January 1997 because it was standard policy to require completion of a "Back to Work" package when an employee had been off work more than 21 days.

In a statement dated June 30, 1997, Ms. Reusche indicated that she had denied appellant's request for a change in schedule on a holiday work week because appellant was needed to work but that appellant called in that holiday alleging that she had car trouble. Ms. Reusche denied that she ever yelled at appellant.

In a statement dated June 30, 1997, supervisor Louis Resendez related that appellant had been given a letter of warning on one occasion for taking emergency annual leave for alleged car trouble on two days when she had earlier been denied a change in schedule to have those same two days off.

In a report dated October 16, 1997, Dr. Robert E. Pelc, a clinical psychologist, related appellant's complaint that she was given variable hours and work assignments which she found unpleasant and that she was concerned that she would be given less than full-time work and would not be able to meet her expenses. He related her concerns that the union was ineffective and she was "singled out" for reprimands concerning use of the front entrance to the employing establishment and for excessive talking and not working fast enough. Dr. Pelc diagnosed mild anxiety disorder but opined that she was able to work. In answer to the question as to whether appellant's condition was caused or aggravated by her job, he stated his opinion that the condition did not appear to be work related.

By decision dated October 30, 1997, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that she sustained an emotional condition causally related to compensable factors of her employment.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition 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.¹ 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.²

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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.⁵ 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Regarding appellant's allegations that the employing establishment denied a requested change in schedule and did not give her a fixed schedule, gave her a split schedule when she requested light duty, issued a letter of warning for using emergency annual leave, assigned her less than full-time work, assigned tasks which she felt were not part of her job description, delayed her reassignment from part-time status to regular status, denied a request for leave, monitored her work closely and requested additional documentation regarding her physician's return to work statement, the Board finds that these allegations relate to administrative or

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷ Although such matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁸ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁹

In this case, in a statement dated June 27, 1997, Mr. Podio stated that the employing establishment normally granted requests for leave but requests were denied if the work load did not allow for additional time off. He stated that part-time flexible workers such as appellant were not guaranteed any particular number of hours, even if the regular workers had completed their shifts and were working overtime. Mr. Podio stated that when appellant's conversion to regular status was delayed due to a possibly incorrect date on the form, the form date was later corrected and she received back pay. He stated that if appellant was ever sent home while she was on light duty, it was probably because the workload was insufficient to keep her working and he noted that light-duty workers are not guaranteed a full shift. Mr. Podio stated that appellant often stopped working to talk to other employees and, if she was disciplined and others were not, it could be because the other workers were continuing to work while they talked. He stated that she was monitored closely because she sometimes did not perform her duties due to her talking to other employees and wandering around the building. Mr. Podio stated that appellant had been asked to submit additional medical information before she returned to work in January 1997 because it was standard policy to require completion of a "Back to Work" package when an employee had been off work more than 21 days.

In a statement dated June 30, 1997, Ms. Reusche indicated that she had denied appellant's request for a change in schedule on a holiday work week because appellant was needed to work but that appellant called in that holiday stating that she had car trouble. She denied that she ever yelled at appellant.

In a statement dated June 30, 1997, Mr. Resendez related that appellant had been given a letter of warning on one occasion for taking emergency annual leave for alleged car trouble on two days when she had earlier been denied a change in schedule to have those same two days off.

The Board finds that in this case there is insufficient evidence of error or abuse in the employing establishment's handling of these administrative and personnel matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are

⁷ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁸ *Id.*

⁹ *Id.*

established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁰ However, 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.¹¹ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹² Appellant alleged that her supervisors discriminated against her and harassed her regarding her job performance and other matters but she provided no corroborating evidence, such as witness statements, to support her allegations.¹³ Thus, appellant has not established a compensable employment factor under the Act in this respect.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁴

The decision of the Office of Workers' Compensation Programs dated October 30, 1997 is affirmed.

Dated, Washington, D.C.
February 2, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹³ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 5 at 502-503.

Alternate Member