

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLA A. FLORES and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

*Docket No. 99-2192; Submitted on the Record;
Issued October 16, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty on September 4, 1998.

On September 10, 1998 appellant, then a 38-year-old flat sorting machine operator filed a claim alleging that she sustained an emotional condition due to the actions of her district manager Jack Watson, on September 4, 1998. Appellant alleged that Mr. Watson made her a "target" and caused her such embarrassment that she was too upset to complete her work that day.

Appellant stated that on September 4, 1998 she had just finished casing her mail when Mr. Watson asked her where she was going and she replied that she was going to get a general purpose mail container (G.P.M.C.) and tubs to pick up some mail. Appellant indicated that Mr. Watson then asked Denise Carter, another manager, why appellant had to get equipment and Ms. Carter responded that the employees get their equipment at the beginning of their tour to ensure that the equipment is available when the time comes to pick up their mail. Mr. Watson then reportedly asked appellant where her case was and she responded by pointing to it. According to appellant, Mr. Watson then stated, "I do n[o]t want anybody getting equipment, I want everybody in their case casing mail." Appellant indicated that she subsequently attempted to find more mail to case, however, she could not and when a clerk asked her if she wanted a G.P.M.C., she stated yes and accepted the equipment. Appellant noted that as she passed by Mr. Watson with the G.P.M.C. he stated, "What did I tell you?" He then stated to Ms. Carter, "What did I tell her?" In response, appellant recounted their previous discussion about his instruction that she should case mail and she explained that she had no more mail to case. Appellant reported that she then told Mr. Watson that he could have the stupid G.P.M.C. and walked off. Appellant alleged that Ms. Carter apologized for Mr. Watson's behavior and stated that she did not know what was wrong with him and why he had picked appellant to harass. Appellant indicated that she then requested a 3971 form so she could leave and, while waiting, she saw Mr. Watson pass by with her coworker who was carrying a G.P.M.C. Mr. Watson

reportedly did not speak to appellant as he passed. Appellant reported that she discussed the situation with a union steward, filled out a CA-1 form and went home. She alleged that Mr. Watson had made her a target and could not be reprimanded because he was in charge. Appellant indicated that, after she went home, she did not leave the house until Sunday, when she had an automobile accident because she had been so upset by the work incident.

The employing establishment controverted her claim and provided supportive statements by Mr. Watson and Ms. Carter, whose accounts mostly corroborated the version of facts alleged by appellant. Mr. Watson stated that he instructed appellant to case mail instead of looking for equipment and later to return to her case when he found her talking to another employee, because he did not want clerks walking around at the beginning of their tour looking for equipment. Mr. Watson explained that he wanted the clerks to perform their work duties and he would see to it that they received their equipment. Ms. Carter related similar facts and noted that appellant began to cry after Mr. Watson told her to return to her case. Ms. Carter reportedly told appellant that she was sorry that appellant was upset and then asked if she wanted to meet with Mr. Watson to express her dissatisfaction with the change in procedure. Appellant indicated that she was too upset to speak with him, but that she wished to see a union steward. Ms. Carter stated that she found a union steward and, later assisted appellant in completing a CA-1 form and offered to end her shift early. A representative of the employing establishment asserted in a statement that, upon review of the factual evidence, Mr. Watson was simply directing appellant in the performance of her duties and that her allegations constituted perceptions and assumptions without facts supporting harassment.

By decision dated October 16, 1998, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence failed to establish that the injury occurred in the performance of duty. The Office noted that appellant's emotional reaction was the result of a reprimand that she received after disobeying Mr. Watson's order. The Office found that appellant's allegations of harassment were unsupported by evidence.

In a letter dated November 11, 1998, appellant through her representative disagreed with the October 16, 1998 decision and requested an examination of the written record.

By decision dated March 19, 1999, the Office affirmed the October 16, 1998 decision. The Office found that appellant failed to establish harassment as the employment factor that caused her condition and, therefore, had not established a compensable factor of employment under the Federal Employees' Compensation Act.

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 on September 4, 1998.

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 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

Appellant alleged that Mr. Watson "targeted" and harassed her while she worked on September 4, 1998, when he instructed her to case mail instead of retrieving a piece of equipment incidental to her work duties. Appellant also alleged that Mr. Watson approached her a second time and instructed her to return to her case, after they had a verbal exchange about his earlier instruction regarding her casing duties. Appellant alleged that she had had other encounters with Mr. Watson in the past and alleged that he had "targeted" her on September 4, 1998 because he allowed other employees on her shift to retrieve their own equipment after he instructed her not to do so. The employing establishment denied the allegations of harassment and provided statements from appellant's supervisors attesting to the events of September 4, 1998 while overseeing appellant in the performance of her duties. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (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, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

duties, these could constitute employment factors.⁷ 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.⁸

In the instant case, appellant alleged that Mr. Watson harassed her during their verbal exchange regarding her work duties. However, the Board finds that the record contains no corroborating evidence of harassment or any error or abuse on the part of Mr. Watson. Other than her perception of being “targeted” as stated in her allegations, appellant has not shown that Mr. Watson acted unreasonably in directing her to perform her duties of casing mail instead of retrieving equipment on September 4, 1998. Although Ms. Carter expressed concern over appellant’s reaction to Mr. Watson’s instruction to return to her case, she did not corroborate that Mr. Watson had harassed appellant as alleged in her claim. Without probative and reliable evidence establishing a factual basis for her claim, appellant’s perception of harassment while being directed to perform her work duties is insufficient to establish a compensable factor of employment.

Because the record contains no reliable and probative evidence which establishes a compensable factor of employment; the Board finds that the Office properly denied appellant’s claim.

The decisions of the Office of Workers’ Compensation Programs dated March 19, 1999 and October 16, 1998 is hereby affirmed.

Dated, Washington, DC
October 16, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).