U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY K. JORDAN and U.S. POSTAL SERVICE,
POST OFFICE, Prescott, AZ

Docket No. 00-229; Submitted on the Record;
Issued December 18, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition while in the performance of her duty.

In a decision dated July 27, 1999, a hearing representative of the Office of Workers' Compensation Programs found that the evidence of record failed to support appellant's allegations of harassment. The facts of this case, well set forth in the hearing representative's decision, are hereby incorporated by reference.

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 her duty.

The Federal Employees' Compensation Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.[2] The phrase "sustained while in the performance of his duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[3] "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out

[1] 5 U.S.C. §§ 8101-8193.

[2] *Id*. at § 8102(a).

[3] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[4]

As the Board observed in the case of *Lillian Cutler*,[5] however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from 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.

An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment;[6] neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;[7] investigations;[8] determinations concerning promotions and the work environment;[9] discussions about an SF-171;[10] reassignment and subsequent denial of requests for transfer;[11] discussion about the employee's relationship with other supervisors;[12] or the monitoring of work by a supervisor.[13]

[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] 28 ECAB 125 (1976).

[6] *Joseph F. McHale*, 45 ECAB 669 (1994).

[7] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[8] *Sandra F. Powell*, 45 ECAB 877 (1994).

[9] *Merriett J. Kauffman*, 45 ECAB 696 (1994).

[10] *Lorna R. Strong*, 45 ECAB 470 (1994).

[11] *James W. Griffin*, 45 ECAB 774 (1994).

[12] *Raul Campbell*, 45 ECAB 869 (1994).

[13] *Daryl R. Davis*, 45 ECAB 907 (1994).

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[14]

Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.[15]

In this case, appellant attributes her emotional condition in part to a tense and difficult relationship with her supervisor that began during her probationary period. She explained that the supervisor had timed her casing mail, had expressed dissatisfaction with her speed, had sent her home early one day, had cancelled her scheme job another day, had advised her that she could not request a change in schedule for the same day without advance approval, had instructed her not to act as an on-the-job instructor, had advised her not to loiter with coworkers after she clocked out, had advised her on the use of family leave, had instructed her how she should case mail, had suggested a rescheduling of her lunch break, had not allowed appellant to do things that the previous acting supervisor had allowed and had stopped rotating her into scheme jobs because he was dissatisfied with her speed.

Any emotional condition appellant might have developed from such matters is, as a general rule, not covered by workers' compensation. Appellant must do more than express personal disagreement with how the supervisor performed his duties: She must establish as a matter of fact that the supervisor committed error or abuse or acted unreasonably in the discharge of his duties. Appellant has implicated wrongdoing by the supervisor: Allegedly, he was not supposed to time her before she was scheme qualified; he seemed to go out of his way to find a reason to fire her; he told others he was going to fire her, that he would let her fall behind and then fire her; he treated her in a disparate manner; he refused reasonable accommodation for her right shoulder injury.[16]

In his responses the supervisor denied wrongdoing. He admitted certain actions, denied others, admitted no knowledge of some and generally provided a completely different perspective of events. He explained that all probationary employees are case checked and that appellant was not singled out. He provided appellant feedback on dispatch time, standard operating procedures and the quality of her performance. He sent her home one day due to light mail volume; she was a part-time flexible employee and was not guaranteed an eight-hour day.

Appellant was given a lot of extra training on even simple tasks. He did not recall ever saying that he was going to fire her, it did not make good business sense to fire someone without good cause. He did not recall canceling appellant's scheme training. Appellant, he stated, confused scheme training with casing time. The supervisor explained that appellant was late for work one day and attempted to cover her tardiness by asking him to approve a change of

[14] *Margreate Lublin*, 44 ECAB 945 (1993).

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

[16] To support her claim of August 6, 1998, appellant provided another statement describing alleged supervisory improprieties and mistreatment.

schedule after the fact. Appellant was observed to be still in the building over an hour after she had clocked out; this was not stopping "briefly" to talk. Appellant had used family medical leave several times and was never denied such leave. She was not an on-the-job instructor; it was not her specially-assigned duty.

According to labor relations in Phoenix, clerks are required to case with their right hand, otherwise the mail will face in a different direction and cause a change in the work process. When appellant's doctor recommended she use her left hand, the supervisor stopped giving her casing duties. Appellant did not want to stop casing, did not want to case with her right hand, did not want to request light duty and did not provide a medical update on her condition every 30 days, as required. The supervisor discussed her lunches, as she was the only employee not to take lunch at the same time every day. The supervisor explained the reason some scheme-qualified clerks do not perform scheme work. The supervisor observed as a general matter that appellant had a problem with work processes and only liked to work certain assignments. She wanted to do things to her liking; when she did not get her way, she reacted.[17]

Appellant also attributes her emotional condition in part to a tense and difficult relationship with coworkers. She was dissatisfied with how an acting supervisor assigned scheme jobs; when she complained of favoritism and accused the acting supervisor of not being able to separate his personal life from his professional life, her relationship with certain coworkers became tense and difficult. These coworkers became rude and hostile. They complained that she did not work fast enough and did not pull her weight at work. Appellant became upset when a coworker complained to an acting supervisor about a trivial matter. She alleged that carriers often cursed at her when she passed out flats and that someone -- she did not know who -- threw a bundle of flats at her, missing her by only six inches. Someone, appellant thought, deliberately bent a letter to her marked, "Please do not bend -- photo." Again she did not know who, but she suspected someone. She stated that coworkers deliberately set up the parcel hampers in a haphazard fashion because they "must have checked the schedule for Monday and saw that I was on parcels Monday." They also labeled the hampers with small numbers to make the job harder for her. One coworker flung a cage at her. A certain group of employees came to work wearing red bandanas; this intimidated appellant and suggested, she stated, their "gang solidarity." One of the coworkers used profanity with great hostility toward her. One coworker erroneously told an acting supervisor that it was appellant's responsibility to unload the netting truck with the SCF flats, not his. She accused several coworkers with conspiring to check on her, one at a time, while she studied schemes in the break room; they were rude and hateful, complained about her and then left shaking their heads in disgust. She accused one coworker of deliberately leaving her a lot of work to do to make her job harder. She accused one coworker of taking her off the parcel schedule; he must have done it, she thought, because he did not want to work with her. Another coworker intentionally ran into her with a U-cart and then complained to an acting supervisor that appellant was in the way. One day appellant walked to the bathroom and a coworker rudely yelled, "I do n[o]t think this is any time to take a break!" This coworker also took down labels appellant had put up. Another coworker

[17] The supervisor responded in similar fashion to the statement appellant submitted to support her August 6, 1998 claim. He accused her of fabrication and taking things out of context.

threw her Tupperware lid in the trash can. Finally, she noticed that her vehicle had been "keyed." She suspected it was done by one of her coworkers.

Appellant's supervisor addressed these matters to the extent he had knowledge about them and offered his own understanding of what had occurred, which did not corroborate appellant's perceptions. Appellant pursued her complaints through the Equal Employment Opportunity Commission and through the grievance procedure, but she submitted no favorable decision or administrative finding to substantiate her allegations. The record contains no evidence establishing error or abuse in any of the disciplinary actions taken against appellant.[18]

To support her claim for compensation, appellant submitted statements from several employees. Several stated that they had thrown flats into tubs on the floor and were never instructed not to do so. One employee stated that he, too, was unhappy with management's training schedules and work area rotation. He felt that some of appellant's claims were self-created and that some were justified. He, too, felt intimidated, harassed and to some extent threatened. Another stated that he asked the supervisor why appellant was not getting more training; the instructor replied that there was no need because he was going to get rid of her anyway. There is additional support from another employee who stated that the supervisor had mentioned, during appellant's probationary period, how much he disliked appellant and that he was going to fire her. The supervisor supposedly stated that he was going to start timing appellant while she was casing mail to justify writing her up. Another employee confirmed that appellant was timed and stated that she was the only person he had seen being timed on any job. An employee stated that the supervisor had once spoken to him about lunch breaks. Another stated that on many occasions he had worked more than six hours before taking lunch due to truck schedules and that the supervisor had approached him about taking his lunch earlier.

None of these statements is sufficient to establish error or abuse by the supervisor in his dealings with appellant. That others have thrown flats into tubs on the floor, and have not been instructed to do otherwise, does not establish the correctness of the activity, the supervisor's knowledge of such activity or disparate treatment by the supervisor toward appellant. That another employee was unhappy with training and rotations and felt intimidated and harassed is immaterial to allegations of error and abuse by the supervisor in his dealings with appellant. The supervisor has reasonably explained the purpose of timing appellant during her probationary period and has also explained his discussion with appellant about lunch breaks. That the supervisor also spoke to other employees about lunch breaks fails to show that the supervisor committed error in doing so or that he treated appellant in a disparate manner.

The most probative evidence submitted to support appellant's claim are the statements from coworkers confirming that the supervisor had mentioned, during appellant's probationary period, that he was going to get rid of her. Assuming that this evidence is sufficient to establish the truth of the matter asserted, the Board finds that such a statement, made by a supervisor about a probationary employee, is not the kind of statement that, on its face, rises to the level of

[18] The removal of a letter of warning from appellant's records is no admission of guilt or evidence of administrative error in the issuance of the letter when the removal is pursuant to a settlement agreement, such settlements being to the prejudice of no party. Likewise, the settlement of appellant's grievance over a suspension is no evidence of error.

administrative error or abuse. There is no evidence in the record that the supervisor violated any rule or regulation in making such a statement in the presence or within the hearing of other workers. Further, it is noted that this evidence fails to support that the supervisor made any such statement to appellant.[19]

Appellant has implicated other factors not directly related to her supervisor or coworkers. She has expressed dissatisfaction with her tour, which was from 11:30 p.m. to 8:00 a.m. The Board has held, however, that an employee's desire to work in a different position or in a particular environment is not compensable.[20]

Appellant has also implicated the stress of trying to learn all three schemes. She had difficulty learning the two smaller schemes and the pressure to learn the larger third scheme so she could case mail faster was too much for her. The evidence indicates that employees were not required to learn all three schemes. To this extent, appellant's allegation is not substantiated. The supervisor, however, has confirmed that appellant was the only employee granted additional time to learn the schemes. She was granted 57 hours to study a 50-hour scheme and 49 hours to study a 42-hour scheme. The supervisor also confirmed that appellant was given a lot of extra training on even simple tasks. These statements tend to support appellant's assertion that she had difficulty learning the two smaller schemes. As learning the schemes was a requirement imposed by the employing establishment, the Board finds that evidence is sufficient to establish this as a compensable factor of employment.

As the Board noted earlier,[21] when an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situations, the disability is generally regarded as due to an injury arising out of and in the course of employment.[22] A claimant must, however, submit medical evidence of a causal relationship.

Causal relationship is a medical issue,[23] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete

[19] *See Gracie A. Richardson*, 42 ECAB 850 (1991) (claimant's emotional reaction to gossip and rumor was a personal frustration not related to her job duties or requirements and, therefore, was not compensable.)

[20] *Donald W. Bottles*, 40 ECAB 349, 353 (1988); *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[21] *Supra*, note 5.

[22] S*ee also Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983) (emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.)

[23] *Mary J. Briggs*, 37 ECAB 578 (1986).

factual and medical background of the claimant,[24] must be one of reasonable medical certainty,[25] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[26]

To support her claim for compensation, appellant submitted an August 11, 1998 report from Dr. Douglas A. Bergstrom, a licensed psychologist, who related the following history given by appellant:

> "Employee claims a pattern of continued harassment by her current supervisor that creates a hostile work environment, including his refusal to assign her to less physically demanding jobs, refusal to follow medical restrictions which she has previously submitted re: use of her left arm and shoulder, verbal criticism and harassment and criticism, disciplinary action which she deems unnecessary and inappropriate; also failure of postmaster to protect her rights against this supervisor; also hearing NO response from Workers' Compensation and EEO re: previously filed complaints, claims and grievances; also no effect[ive] support or help from her local union. This employee claims that she can and will do her job, but was not allowed enough work time to learn a 'scheme' for letter sorting, then is not assigned to scheme work because she does not know the scheme. She has described over many months the treatment by the supervisor, and her efforts to remedy the situation through channels. She has also been unsuccessful in obtaining a transfer to another shift or facility due to having used a great deal of sick leave for the above problems, and due to ongoing severe illness of her father.
>
> "On her August 5, 1998 office visit, the employee claims that she can no longer work for this supervisor, that she is afraid that he will get her fired 'one way or another,' that she is too depressed and angry to work effectively under him, and that she walked off the job on July 28, 1998 after one more confrontation with the supervisor in which she alleges he again gave her unwarranted criticism and believes that he is trying to provoke her until she quits or he can terminate her."

After relating his findings, Dr. Bergstrom diagnosed major depressive episode, secondary to severe work stress. He then offered his opinion on the issue of causal relationship:

> "It is my professional opinion that this condition is a work related and therefore compensable condition due to the fact that the claimant has been reporting to me over the past year very specific incidents of behavior from her supervisor which has placed undue and unnecessary stress on her to the point of threatening her with her job; that the onset of her symptoms (see previous report) occurred after several months of this sort of workplace treatment; that she has documented to me (by showing copies of her written complaints and claims) her efforts to remedy

[24] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[25] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[26] *See William E. Enright*, 31 ECAB 426, 430 (1980).

> this situation through normal administrative and grievance channels; and that she reports no prior history of any depression of this sort prior to the beginning of these work problems several years ago. In my opinion, this claimant would also be at risk for further worsening of her depression to the point of incapacitation or possibly suicide if she remained in this work environment, and that she requires continued treatment to moderate or alleviate the condition regardless of the nature of any future work environment."

Dr. Bergstrom's opinion relates appellant's diagnosed major depressive episode to her federal employment, but as the Board has explained, workers' compensation law does not cover each and every illness that is somehow related to the employment. Appellant has related to Dr. Bergstrom a variety of actions by her supervisor that she perceives as harassment and to which she attributes her emotional condition, but none of these is established to be a compensable factor of employment. Regardless of whether they caused or contributed to her diagnosed psychological condition, they do not entitle appellant to benefits. Only one factor of employment is established as compensable in this case: the difficulty appellant had learning the two smaller schemes, which her employment required her to learn. The specific issue raised, therefore, is whether this one compensable factor of employment caused or contributed to appellant's diagnosed psychological condition.

Dr. Bergstrom mentioned that appellant was not allowed enough work time to learn a scheme and then was not assigned to scheme work because she did not know the scheme. This history is not accurate because it implicates improper behavior by the supervisor, which is not established by the factual evidence in this case. It is accepted that appellant was required to learn the two smaller schemes, that she had difficulty doing so and that she was given additional time to study them. The narrow question is whether this requirement caused or contributed to appellant's major depressive episode. Dr. Bergstrom's opinion is of little probative value in this respect because it is too broad; he supports the element of causal relationship based on a host of factors, related to him by appellant, that are not accepted as established compensable factors of employment.[27]

Dr. Bergstrom's opinion is also of little probative value because it lacks sufficient rationale to explain how, from a psychological perspective, the requirement that appellant learn the two smaller schemes caused or contributed to her major depressive episode.[28] Dr. Bergstrom's reasoning must focus on this one factor of employment and be persuasive enough to convince the lay adjudicator that the conclusion drawn is rational, sound and logical.[29]

Because the medical opinion evidence is insufficient to establish a causal relationship between the established compensable factor of employment and appellant's diagnosed major

[27] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

[28] The Board has held that medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[29] *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

psychological condition, appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of her duty.

The July 27, 1999 decision of the Office of Workers' Compensation Programs is modified to find one compensable factor of employment and is otherwise affirmed.

Dated, Washington, DC
December 18, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member