

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIE CLARK and U.S. POSTAL SERVICE,
SPRINGER ARCHIVES WAREHOUSE, Albuquerque, NM

*Docket No. 00-644; Submitted on the Record;
Issued February 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case record and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On October 22, 1997 appellant, then a 46-year-old "general clerk rehab," filed a traumatic injury claim (Form CA-1) alleging that on October 21, 1997 she sustained an emotional condition caused by factors of her federal employment. She stopped work on October 22, 1997.

By decision dated February 11, 1998, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a February 6, 1999 letter, appellant requested an oral hearing before an Office representative.

By decision dated April 14, 1999, the Office denied appellant's request for modification based on a merit review and affirmed the Office's prior decision as modified.

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 coverage of the Federal Employees' Compensation Act.¹ Where the disability results from an employee's emotional reaction to her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the

¹ 5 U.S.C. § 8101 *et seq.*

employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.²

Perceptions and feelings alone are not compensable. 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 factors of her federal employment.³ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁴

In this case, appellant alleged that Malcolm Mori, an employing establishment purchasing specialist, repeatedly recorded her time incorrectly. She also alleged that Al Provencio, appellant's supervisor, removed her from her office and made a laughing stock of her. She stated that she sat among roaches, rats and filth.

The use of leave⁵ and the reassignment of an employee to a different position⁶ constitute administrative or personnel matters. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.⁷

In response to appellant's allegation that he recorded her time incorrectly, on October 24, 1997 Mr. Mori stated:

"I have been very accommodating to [appellant] in recording her time as correctly as possible. She previously did not even contact me on days when she was absent, so I did not know what to code the absence. On those days, I did place a sick day code just so that something was recorded. Otherwise, she would NOT have been paid for that day if a code was not entered.

"After she returned to work, I would fill out PS Form 2240 to correctly fill out her time. [Appellant] has rarely given me a PS Form 1260 or a sick leave form, which she should, after she's returned to work."

In his October 24, 1997 narrative statement, Stanley Chavez, appellant's supervisor, indicated that he was working with appellant on October 21, 1997 and that they had a conversation about her time being input incorrectly for the week of October 14, 1997.

² *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁶ *James W. Griffin*, 45 ECAB 774 (1994).

⁷ *Id.*

Mr. Chavez stated that he told appellant that if there was a problem with her pay, then a PS Form 2240 would be completed to adjust her work hours. He stated that Mr. Mori filled out his portion of the form, but that appellant did not complete her portion of the form. Mr. Chavez noted that he worked with appellant at 2:15 p.m. on October 21, 1997 and that he did not notice her crying when she left work. He stated that appellant told him that she had a doctor's appointment at 3:15 p.m.

Regarding appellant's reassignment, Mr. Chavez indicated that there had been roaches at the warehouse. He called Davis Pest Control, Inc. to spray every 30 days and the company checked for rat control and filth. Mr. Chavez stated that the warehouse was under a contract for cleaning services, which were provided every Monday, Wednesday and Friday. In addition, he indicated that appellant was reassigned to the warehouse to accommodate her physical restrictions.

Based on the statements of Mr. Mori and Mr. Chavez, the record does not establish that the employing establishment erred or acted abusively in recording appellant's time and reassigning appellant. The Board finds that since there is no evidence of error or abuse appellant has failed to establish a compensable employment factor under the Act.

Appellant alleged that Mr. Mori made derogatory statements regarding her absence from work. Specifically, Mr. Mori told her to stop pretending that she was hurt and to come to work so there would not be any problem with her time. Appellant charged that Mr. Mori implied that she was lying about her pain. In addition, she alleged that Mr. Provencio and other members of the office made evil, insulting, hateful and degrading comments.

Actions of an employee's supervisor, which the employee characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.⁸ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁹ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.¹¹

In his October 24, 1997 narrative statement, Mr. Mori vehemently denied appellant's allegation that he told her to stop pretending to be hurt and to come to work so that there would not be any problem with her time. He also stated that he was offended by appellant's statement that he implied she was lying about her pain.

Mr. Provencio related in an October 22, 1997 narrative statement that he had very limited contact with appellant and that he had not spoken more than a few words to her since she began

⁸ *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁹ *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁰ *William P. George*, 43 ECAB 1159 (1992).

¹¹ *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

work at the warehouse six months ago. He stated that his brief contacts with appellant had been strictly business regarding the decision analysis reports she worked on. Mr. Provencio further stated:

“I do not understand the reason for her statement that I have made evil, insulting, and degrading statements since I have made it a point to be polite and have tried to understand her physical limitations and have worked to accommodate her employment needs.”

Appellant’s allegation that she was verbally harassed by derogatory statements from Mr. Mori and Mr. Provencio is not substantiated by the record. She has not submitted any witness statements corroborating these incidents. Therefore, the Board finds that appellant has failed to establish that verbal harassment actually occurred.

As appellant has not established any compensable factors of her federal employment that she implicates in causing or contributing to the development of her emotional condition, appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.¹²

The April 14, 1999 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 16, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹² As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case.