U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANET E. LYNCH and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 00-871; Submitted on the Record;*
*Issued March 21, 2001*

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DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying reconsideration on November 23, 1999 and January 14, 2000.

Appellant, a 53-year-old mail processor, filed a notice of occupational disease alleging that she had developed a chemical imbalance due to factors of her federal employment, including disciplinary actions on May 26 and June 2, 1999. The Office denied appellant's claim by decision dated August 31, 1999. Appellant requested reconsideration on September 7 and December 14, 1999. The Office denied her reconsideration request by decisions dated November 23, 1999 and January 14, 2000.

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[1]

In this case, appellant attributed her emotional condition to disciplinary actions taken by the employing establishment on May 26 and June 2, 1999. On May 26, 1999 the employing

[1] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

establishment issued a notice of removal within 30 days due to absence without leave (AWOL). Appellant grieved this letter stating that she had submitted medical documentation and that a February 24, 1999 letter of warning was not issued. Appellant submitted a grievance settlement dated June 16, 1999, stating that the letter of removal dated May 26, 1999 was rescinded.

Appellant's supervisor, Marvin Tanks, stated that he issued the letter of removal because appellant failed to provide him with updated documentation on her continued absence since March 29, 1999. He rescinded the letter of removal based on documentation received from appellant's physician after Mr. Tanks issued the letter of removal. He stated that she was on sick leave without pay as she had no leave and did not qualify for the Family Medical Leave Act.

Appellant submitted a narrative statement alleging that she called to report her absence on March 21 and 22, 1999, but that the telephone system would not allow her to leave a message. Appellant stated that she was charged with AWOL for these dates. She submitted a request for medical documents from the employing establishment dated April 8, 1999, noting that she had been continuously absent since March 28, 1999 and that she was not entitled to leave under the Family Medical Leave Act.

Appellant's allegations that the employing establishment engaged in improper disciplinary actions and wrongly denied leave relate to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of the Federal Employees' Compensation Act.[2] Although the handling of disciplinary actions and leave requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[3] As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[4]

The only evidence that appellant has submitted is the grievance rescinding the letter of removal. The Board has held that the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.[5] Appellant has submitted no further evidence supporting error and her supervisor, Mr. Tanks merely indicated that he rescinded the letter of removal because appellant submitted the necessary medical evidence. Therefore, appellant has not established this factor of employment.

[2] *See Janet I Jones,* 47 ECAB 345, 347 (1996); *Jimmy Gilbreath,* 44 ECAB 555, 558 (1993); *Apple Gate,* 41 ECAB 581, 588 (1990); *Joseph C. DeDonato,* 39 ECAB 1260, 1266-67 (1988).

[3] *Id.*

[4] *Martha L. Watson,* 46 ECAB 407 (1995).

[5] *Michael Thomas Plante* 44 ECAB 510, 516 (1993).

Appellant filed a complaint on June 3, 1999 alleging that she was subject to reprisal due to her disability. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[6] Appellant has submitted no evidence in support of her allegation of reprisal and has failed to substantiate this factor of employment.

As appellant has failed to submit the necessary factual evidence to establish a compensable factor of employment, she has failed to meet her burden of proof and the Office properly denied her claim.

The Board further finds that the Office did not abuse its discretion by denying reconsideration on November 23, 1999 and January 14, 2000.

Following the Office's August 31, 1999 decision, denying her claim for an emotional condition, appellant requested reconsideration on September 7, 1999. Appellant again alleged that she was subject to reprisal due to her disability claim. The Office declined to reopen appellant's claim for consideration of the merits on November 23, 1999. Appellant again requested reconsideration on December 14, 1999 and referred to disciplinary action not even issued. She alleged reprisal on the part of the employing establishment. The Office refused to reopen appellant's claim for consideration of the merits on January 14, 2000.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.[7]

In both her September 7 and December 14, 1999 requests for reconsideration, appellant repeated her allegation that she experienced reprisal by the employing establishment for her disability claim and that the employing establishment utilized unissued disciplinary actions in its rescinded letter of removal. Appellant had previously raised both of these allegation before the Office prior to the issuance of the August 31, 1999 decision. Therefore, these assertions by appellant are repetitious and do not constitute either relevant and pertinent new evidence or a relevant legal argument not previously considered by the Office. For this reason, the Board finds that the Office did not abuse its discretion by denying reconsideration of the merits.

The January 14, 2000, November 23 and August 31, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

[6] *Alice M. Washington*, 46 ECAB 382 (1994).

[7] 5 U.S.C. § 10.606.

Dated, Washington, DC
March 21, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member