

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NONA STANFORD and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 00-1295; Submitted on the Record;
Issued May 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

On September 30, 1996 appellant filed a claim alleging that she sustained an emotional condition causally related to her federal employment. In a narrative statement dated December 18, 1996, appellant alleged that she was subject to harassment and discrimination by the employing establishment. Appellant stated that she had been investigated for theft, placed in nonduty status in 1988 for over one year, been denied promotions and given disciplinary actions.

In a decision dated May 30, 1997, the Office of Workers' Compensation Programs denied the claim finding that appellant had not established any compensable work factors contributing to an emotional condition. By decision dated August 13, 1998, an Office hearing representative affirmed the prior decision. In a decision dated November 15, 1999, the Office denied modification.¹

The Board finds that appellant has not established that she sustained an emotional condition causally related to compensable work factors.

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.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual

¹ The decision and the accompanying memorandum contain conflicting statements that the evidence is not sufficient to review the decision and that it is not sufficient to warrant modification. Since the Office did reiterate its finding that the evidence failed to establish a compensable work factor, the Board finds that the November 15, 1999 decision was a merit review of the claim.

² *Pamela R. Rice*, 38 ECAB 838 (1987).

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.³

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

In this case, appellant has alleged discrimination and harassment by her supervisors over a period of years. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁵ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁶

Although appellant indicated that she had filed complaints with the Equal Employment Opportunity Commission (EEOC), there are no findings with respect to an EEOC claim, or other probative evidence. The record contains a brief grievance settlement dated December 12, 1994, stating that management will treat employees with respect, but the settlement indicates that it is without prejudice to the position of either party and does not constitute an admission of harassment or of erroneous action by the employing establishment. Moreover, there are several statements from appellant's supervisors refuting allegations of discrimination or harassment. The Board is unable to find any probative evidence sufficient to base a claim for harassment or discrimination in this case.

In discussing her claim, appellant has noted specific administrative actions of the employing establishment. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁷ The Board has also found, however, that an administrative

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁶ *Helen P. Allen*, 47 ECAB 141 (1995).

⁷ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁸

Appellant stated that she had never been properly compensated for being placed in a nonduty status in 1988 due to a prior injury; there is, however, no evidence of error or abuse in this matter. In an April 29, 1992 decision, an arbitration panel denied appellant's grievance with respect to this issue. Appellant has also indicated that she was investigated for theft by the employing establishment. An investigation is an administrative function of the employer and there must be probative evidence of error or abuse to establish a compensable work factor.⁹ In this case, appellant stated that she was humiliated by the investigation, but the employing establishment is entitled to investigate possible theft and no evidence of error or abuse was presented.

In the absence of probative and reliable evidence of harassment, discrimination, or administrative error, the Board finds that appellant has not established a compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁰

The November 15, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 22, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ See *Sandra F. Powell*, 45 ECAB 877 (1994).

¹⁰ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).