U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIE L. FLUELLEN and U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA

Docket No. 00-2283; Submitted on the Record;
Issued May 29, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On January 1, 2000 appellant, then a 41-year-old flat sorting machine (FSM) clerk, filed a claim alleging that on that date she sustained an emotional condition due to a coworker harassing her. She claimed that Tabitha Parr "keeps coming around and smirking and looking at me menacing and threatening." Appellant claimed that she could not take any more of her threatening gestures and looks.

Management indicated that on January 1, 2000 appellant was assigned to FSM #7 and Ms. Parr, who was assigned to FSM #19, "came to FSM #7 and gave threatening look." Management indicated that Ms. Parr had been instructed to stay away from appellant and any area where appellant was working.[1]

In an additional statement regarding the January 1, 2000 incident, appellant claimed that at 4:20 p.m. Ms. Parr appeared "in the location of [the] machine in the far back where the SP [illegible] machines." She claimed that when she looked up Ms. Parr "was staring at me menacing real quick so no one else could observe her" and left when a supervisor started in their direction. Appellant continued that at 5:58 p.m. she was at the back of the machine when Ms. Parr arrived and looked at her menacingly. She stated that Ms. Parr was talking to another employee on machine #7 but looked at her and smirked as appellant left. Appellant claimed that she feared for her safety.

The lead supervisor, Michael Nelson, provided a statement regarding the January 1, 2000 incident noting that appellant had come to him complaining of feeling threatened by Ms. Parr

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[1] The record suggests that appellant and Ms. Parr had a prior confrontation and/or that appellant's husband and Ms. Parr's husband may have been involved in a lawsuit not related to appellant's employment.

because Ms. Parr had come to her machine. Mr. Nelson noted that no contact occurred and that "it was all done with looks and stares."

Ms. Parr provided a statement indicating that on a break on the way to the swing room she stopped by the back of machine #7 because Mr. Scales called her to show her some pictures he had brought in and that, at that moment, appellant was walking by the front of machine #7. She stated that she had no idea appellant was working there because when she stopped no one was there except Mr. Scales and Kathy Pitts. Ms. Parr stated that she left the back of the machine and went to the swing room and that at no time did she come in contact with or have any eye contact with appellant. She alleged that this emotional condition claim was appellant's form of harassing her because of their husband's legal difficulties.

By letter dated January 28, 2000, the employing establishment controverted appellant's claim arguing that she was claiming stress from someone looking at her, which was self-generated.

By memorandum dated February 3, 2000, the employing establishment again controverted appellant's claim noting that there was no evidence that appellant had been harassed or threatened, real or implied, by Ms. Parr and that a prior disagreement had been the subject of several remedial actions.

By letter to appellant dated February 24, 2000, the Office of Workers' Compensation Programs requested further information including a detailed list of the work factors implicated in causing her illness.

By statement dated February 26, "1999," appellant claimed that the situation with Ms. Parr started after "the assault of a coworker, Mr. Winston, on March 17, 1999" and her going to the employing establishment after this assault and seeing Mr. Winston's cap left on the pavement. Appellant claimed that she was told that Ms. Parr was trying to get out of there and was warned not to let her use appellant "to get a case." Appellant stated that she had been reporting Ms. Parr for stalking her and looking menacingly and threateningly at her at her new location since April 1999 and noted that, when reported, Ms. Parr had been in areas where management had instructed her not to go.

By memorandum dated March 2, 2000, the employing establishment noted that they had been working to accommodate appellant "even though her complaints against [Ms. Parr] lacked supportive evidence" and it noted that appellant had taken it upon herself to stop reporting for duty rather than to allow accommodation.

By statement dated March 8, 2000, appellant claimed that on March 21, 1999 she was approached and surrounded at the time card clock, was subjected to menacing looks and heard words about how easy it is to be shot.

In an additional statement dated March 8, 2000, appellant indicated that she was so distressed that she had to go home on January 1, 2000 because Ms. Parr was "insubordinate to management's authority" and made her feel a direct threat even stronger that Ms. Parr would cause her bodily harm. Appellant also claimed that Ms. Parr brushed up against her physically.

In an expanded March 8, 2000 statement, appellant alleged that when she was at the time clock she was approached by Ms. Parr and Tyrone Harris and Mr. Harris spoke about how easy it was "for someone to get popped and shot" and Ms. Parr responded "yea." Appellant claimed that she was fearful for her life. She claimed that physically Ms. Parr had her hand on her own right hip and looked at appellant threateningly; that appellant asked Ms. Parr why she was looking at her and that Ms. Parr replied asking why appellant was looking at her. Appellant claimed that her time card location was changed but that Ms. Parr started stalking her there. She indicated that Ms. Parr was pregnant and that Mr. Nelson said that she could use appellant's constant reporting of her to get out of there. Appellant claimed that Ms. Parr stalked her outside; that when she took a smoke break Ms. Parr and Mr. Harris came out of the building and stood there staring at her. Appellant claimed that when she entered the building she had to walk between Ms. Parr and Mr. Harris which upset her and that while standing in the small space by the time clock location looking for her time card she felt someone brush against her shoulder-length braided hair and purse and that when she turned she saw Ms. Parr leaving the area. Appellant indicated that she had reported this conduct. When questioned by management, Ms. Parr responded that appellant should have told her that she had brushed up against appellant, indicated that she was pregnant and stated that she was being harassed by appellant. Ms. Parr was instructed not to be stationary around appellant, but upon return from maternity leave in December 1999 appellant claimed that Ms. Parr began stalking her all over again by standing stationary in front of appellant's machine and yelling to a coworker, Ms. Green, which caused appellant to look at Ms. Parr. Appellant claimed that on January 1, 2000 she was assigned FSM #7, a machine to which she was not normally assigned, when Ms. Parr made eye contact with her while standing stationary talking with another employee on the machine, which was more than she could bear. She indicated that she had to go to the medical unit where it was determined that she had high blood pressure and a high pulse rate.

By decision dated April 24, 2000, the Office rejected appellant's claim finding that she had failed to establish any compensable factors of employment in the development of her disabling condition. The Office found that Ms. Parr looking at appellant did not constitute harassment.

In a letter dated May 15, 2000, appellant requested that further consideration be given to her case based upon information provided by two witnesses she identified.[2]

By decision dated June 6, 2000, the Office denied modification of its prior decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the incidents alleged did not constitute compensable factors of employment.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

To establish appellant's claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her

[2] No statements from these witnesses were provided.

condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[4]

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. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.[5] Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.[6] Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."[7]

When working conditions are alleged as factors in causing 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.[8] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the

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

[4] *Id.*

[5] *Donna Faye Cardwell, supra* note 3, *see also Lillian Cutler,* 28 ECAB 125 (1976).

[6] *Id.*

[7] *See Joseph DeDonato,* 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

[8] *See Barbara Bush*, 38 ECAB 710 (1987).

evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[9] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.[10] If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that none of the allegations of appellant were compensable factors of employment.

Appellant did not allege that she developed an emotional condition arising out of her regular or specially assigned duties or out of specific requirements imposed by her employment. She alleged that her condition was caused by coworker harassment by a coworker, Ms. Parr. The Board has held that actions of an employee's coworker or supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.[11] However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.[12] The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her allegations of harassment. No witness statements corroborating that Ms. Parr ever insulted, quarreled with or verbally abused appellant or manifested and sort of threatening behavior towards appellant, were submitted. Appellant claimed that she felt threatened merely by Ms. Parr being in the same work area or by looking in her direction.

Appellant alleged that Ms. Parr brushed against her long braids and pocket book, but this was denied by Ms. Parr and was not corroborated by witnesses. The Board has held that physical contact by a supervisor or by a coworker, if substantiated by the evidence of record, may give rise to a compensable factor under the Act if the medical evidence establishes that a condition was thereby caused or aggravated.[13] However, in this instance such contact was denied by Ms. Parr and was not supported by witnesses. Therefore, it has not been established as having occurred. Further, by her own statement appellant admitted that when this alleged brushing occurred, she initially did not realize who or what had caused it and that she did not experience stress due to the alleged brushing until she turned to see Ms. Parr walking away.

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

[10] *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

[11] *Sylvester Blaze*, 42 ECAB 654 (1991).

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

[13] *Karen E. Humphrey*, 44 ECAB 908 (1993); *Alton L. White*, 42 ECAB 666 (1991); *Constance G. Patterson*, 41 ECAB 206 (1989).

Although the Office accepted as factual that Ms. Parr made a statement about weapons to appellant, the Board finds that, according to appellant's description of the event, the offending statement was made by Mr. Harris and not by Ms. Parr and was not made to appellant but was made to Ms. Parr as a general comment without a clear meaning. This, therefore, also does not constitute threatening words by Ms. Parr to appellant.

Appellant has the burden of establishing a factual basis for her allegations; however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 6 and April 24, 2000 are hereby affirmed.

Dated, Washington, DC
May 29, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member