U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL PLUNKETT and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Forest Park, IL

Docket No. 00-423; Submitted on the Record;
Issued September 13, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant developed an emotional condition due to federal factors of employment; and (2) whether the Office of Workers' Compensation Programs properly found that appellant abandoned her request for an oral hearing.

Appellant, a 50-year-old custodian, filed a notice of occupational disease on July 30, 1998 alleging that she developed stress due to factors of her federal employment. The Office requested additional information from appellant and the employing establishment. After evaluating the evidence in the record, the Office issued a decision on February 10, 1999 finding that appellant had failed to establish that her emotional condition was due to a compensable factor of employment.

Appellant disagreed with this decision and requested an oral hearing, which was held on March 5, 1999. By decision dated July 6, 1999, the hearing representative found that appellant had abandoned her request for an oral hearing.

The Board finds that appellant has failed to meet her burden of proof in establishing 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]

---

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

In support of her claim, appellant submitted several documents generated by the union regarding supervisory activity, attacks on other employees and threatening telephone calls. Appellant did not submit any evidence that she was subjected to the incidents reported. Appellant has failed to establish that the illegal activities of other employees or individuals are related to her regular or specially assigned duties. Therefore, these events would not constitute compensable employment factors.[2]

Appellant filed an Equal Employment Opportunity (EEO) complaint on April 22, 1996, alleging that Harry Wilson harassed her for documentation for sick leave usage. In response to an EEO inquiry, the employing establishment noted that appellant requested annual leave on December 19, 1995 for December 20, 23 and 24, 1995. The acting supervisor could not address this request. On December 20, 1995 appellant requested 24 hours of sick leave. Mr. Wilson entered appellant's sick leave as leave without pay as appellant had already requested annual leave for these dates. Upon appellant's return to work, Mr. Wilson agreed to pay the leave requested. Appellant received 16 hours of sick leave and eight hours of leave without pay.

The employing establishment conducted a discussion with appellant on April 7, 1998 regarding her attendance. On June 9, 1998 appellant received a letter of warning for failure to maintain a regular work schedule. By decision dated December 21, 1998, issued without prejudice to either party, the employing establishment reduced the letter of warning to a job discussion.

Appellant stated that on June 16, 1998 acting supervisor Joseph E. Gabrysiak discussed a letter found in the maintenance control office with appellant's name on it. She stated that the discussion regarding the letter was to end on June 16, 1998. Appellant alleged that Mr. Wilson harassed her regarding the letter on June 17, 1998. Appellant received a seven-day suspension on June 20, 1998 for conduct unbecoming a postal employee. Mr. Wilson stated that he informed appellant on June 17, 1998 that she could not take her breaks in the maintenance control office and that appellant became hostile, belligerent and used foul language. On August 4, 1998 appellant filed an EEO complaint alleging that this suspension constituted harassment.

On November 4, 1998 the employing establishment informed appellant that she had been absent from duty since October 27, 1998 and directed her to report to duty. The employing establishment informed appellant that she had five days to report to work or substantiate her absence, otherwise action would be taken to separate her from her position at the employing establishment. Appellant stated that she submitted the necessary documentation on November 5, 1998, but that her check did not include payment for the requested leave. Appellant stated that she returned to work on November 8, 1998 and submitted medical evidence which the employing establishment nurse rejected because it did not include a true signature. Appellant filed a grievance on November 16, 1998.

The handling of disciplinary matters and leave issues relates to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or

[2] *See Larry J. Thomas,* 44 ECAB 291, 301 (1992).

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.[3] In this case, appellant has submitted no evidence that the employing establishment acted unreasonably. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[4]

Appellant stated that she was required to work outside her work restrictions beginning July 17, 1989. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[5] In a statement dated September 6, 1998, Mr. Gabrysiak, a manger, stated that appellant's job assignments follow her restrictions and that she was never assigned work outside those restrictions. Appellant has submitted no additional evidence supporting her allegation of work outside her restrictions and the Board finds that she has not substantiated this factor of employment.

Appellant bid for a job in 1990 on Tour III, was denied this position and filed a grievance. Appellant again bid for this position on February 17, 1993, but was denied and she again filed a grievance. Appellant filed a complaint with the EEO on April 16, 1993 alleging that the employing establishment improperly denied her bid for Tour III on the grounds that she had work restrictions that prevented her from performing the full-duty position. Appellant stated that the change in tours resulted in her inability to sleep for 12 days. There is no evidence in the record establishing that the employing establishment erred in denying appellant's initial request for transfer or of a decision that the initial denial of her second request for a transfer was in error. As appellant has not established error or abuse on the part of the employing establishment, the denial of transfer does not constitute a compensable factor of employment. The Board further notes that appellant requested and actively pursued the transfer. The resulting change in her sleep patterns were a consequence of a change sought by appellant and, therefore, not compensable.

Appellant alleged that she was required to clean the men's restroom on both tours of duty, that men would ignore the "closed" signs and make use of the urinals, exposing themselves to her. Appellant's supervisor stated that she was not assigned to clean the men's washrooms. Appellant has failed to submit any supportive evidence and has failed to establish this factor of employment.

Appellant asserted that she was subjected to both illegal drug use and cigarette smoke in the performance of duty. Mr. Wilson stated that the employing establishment was a no smoking facility and that employees were disciplined if found smoking within the facility. Appellant did

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

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

[5] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

not provide any specifics regarding the occasions on which she was subjected to cigarette smoke and has not established a compensable factor of employment.

Appellant attributed her emotional condition to weekly safety talks during which she had to "listen to the arguments, abusive language and profanity." Mr. Wilson stated that safety talks were given weekly and that all employees were required to attend. He noted that appellant had raised her voice on several occasions and used profanity at the meetings. The Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act. In this case, appellant has not submitted evidence of specific statements that she found abusive. Therefore, the Board cannot find coverage.

Appellant alleged that she was harassed by her supervisor, Mr. Wilson. She submitted a petition signed by herself and her coworkers requesting that Mr. Wilson be removed due to his harassment and unfair tactics. Appellant filed an EEO complaint on July 10, 1997 alleging that Mr. Wilson was harassing her due to her physical limitations. She also alleged that she was harassed through disciplinary actions and leave denials.

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 not submitted any evidence in support of her allegations of harassment by Mr. Wilson.

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 in establishing an emotional condition due to factors of her federal employment.[7]

The Board further finds that appellant abandoned her request for an oral hearing.

In a decision dated July 6, 1999, the Office found that appellant abandoned her March 5, 1999 request for an oral hearing before an Office hearing representative. The Office noted that the hearing was scheduled for June 17, 1999, that appellant received written notification of the hearing 30 days in advance, that appellant failed to appear and that the record contained no evidence that appellant contacted the Office to explain her failure to appear.

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

[7] Appellant's argument that her medical evidence was not considered is irrelevant inasmuch as she failed to establish a compensable factor of employment.

Section 10.137 of Title 20 of the Code of Federal Regulations, revised as of April 1, 1997, previously set forth the criteria for abandonment:

> "A scheduled hearing may be postponed or canceled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant."
>
> * * *
>
> "A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing."[8]

These regulations, however, were again revised as of April 1, 1999. Effective January 4, 1999, the regulations now make no provisions for abandonment. Section 10.622(b) addresses requests for postponement and provides for a review of the written record when the request to postpone does not meet certain conditions.[9] Alternatively, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative. The section is silent on the issue of abandonment.

The legal authority governing abandonment of hearing now rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

> "e. Abandonment of Hearing Requests.
>
> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: The claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.
>
> "Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district office]. In cases involving prerecoupement hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

[8] 20 C.F.R. § 10.137(a), (c) (revised as of April 1, 1997).

[9] 20 C.F.R. § 10.622(b) (1999).

"(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.[10]

"This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."

In this case, the Office scheduled an oral hearing at a specific time and place on July 17, 1999. The record shows that the Office mailed appropriate notice to the claimant at her last known address. The record also shows that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Appellant's lack of action meets the conditions for abandonment specified in the Office's procedure manual. Therefore, the Office properly found that appellant abandoned her request for an oral hearing.

The July 6 and February 10, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 13, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).