U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA GULLETTE and U.S. POSTAL SERVICE, OAKLAND PROCESSING & DISTRIBUTION CENTER, Oakland, CA

Docket No. 00-2575; Submitted on the Record;
Issued May 21, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that her emotional condition occurred in the performance of duty.

On March 23, 1999 appellant, then a 38-year-old distribution clerk, filed a claim for work-related stress. She alleged mental and sexual harassment by being required to request permission every time she needed to go to the bathroom, even though her coworkers did not have the same requirement. Appellant also claimed that she was being stalked and harassed by a supervisor, Nathan Griffin. In an accompanying statement, she noted that, when a shop steward brought her complaints of stalking to another supervisor, Joseph Perkins, he responded that appellant was mentally incompetent. She alleged that the employing establishment sought to isolate her from her coworkers and interfered with her work by mixing her hold outs of bulk business mail with her first class mail. Appellant was instructed to put her mail on a special dolly when she swept her case and was instructed not to sweep the cases of coworkers. She contended that she was required to go beyond what was required of coworkers to substantiate her medical limitations. Appellant subsequently stated that the Merit System Protection Board (MSPB) had found that the employing establishment had failed to comply with her medical limitations.

In an October 12, 1999 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she had failed to establish a compensable emotional condition in the performance of duty. She submitted additional evidence and requested a hearing before an Office hearing representative. In a June 12, 2000 decision, the Office hearing representative found that appellant had not met her burden of proof to establish that she developed an emotional condition resulting from factors of her employment.

The Board finds that appellant has not established that she sustained an emotional condition causally related to her employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

Appellant indicated that on March 4, 1996 she was reassigned to another tour in violation of a settlement agreement with the employing establishment over a prior grievance. She submitted a January 26, 1998 decision, of the MSPB, which found that appellant's reassignment to another tour violated the settlement agreement. This decision is evidence of error on the part of the employing establishment in reassigning appellant and constitutes a compensable factor of employment.

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor, which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[4]

Appellant contended that, for a four-year period, from October 1994 to June 1998, Mr. Griffin watched her and monitored her work. She submitted notes from two coworkers who indicated that Mr. Griffin's presence in appellant's section increased after she began working in

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

[2] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey,* 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985); *Peter Sammarco,* 35 ECAB 631 (1984); *Dario G. Gonzalez,* 33 ECAB 119 (1982); *Raymond S. Cordova,* 32 ECAB 1005 (1981); *John Robert Wilson,* 30 ECAB 384 (1979).

[3] *Thomas D. McEuen,* 41 ECAB 387 (1990) *reaff'd on recon.,* 42 ECAB 566 (1991).

[4] *Joan Juanita Greene*, 41 ECAB 760 (1990).

the unit. While she claimed that Mr. Griffin was stalking and harassing her, she has not established that he harassed her in monitoring her work.

Appellant stated that on May 29, 1998 she could not find supervisor Florencio Banares to tell him that she needed to go to the restroom. She informed a coworker and then went to the restroom. After she returned to her work area, Mr. Banares instructed appellant to tell him when she went to the restroom. She responded that he had not been present so she told a coworker. Appellant alleged that Mr. Banares accused her of lying and began to yell at her. She alleged that she was being subjected to disparate treatment. Appellant left work that day and received a note from her physician allowing her to use the restroom as necessary because she was taking diuretics for a heart condition. Appellant indicated that in a previous incident, in January 1996, Mr. Banares had questioned the time she was in the restroom, with her stating that she had diarrhea. She related that Mr. Banares at that time was reprimanded for his actions. Appellant claimed that she was subjected to disparate treatment in being the only employee required to inform her supervisor of every trip to the restroom, describing the incident in detail. However, the requirement was an administrative action on the part of her supervisor. There is no indication that the supervisor's actions in monitoring appellant's situation was in error or abusive.

Appellant indicated that on June 1, 1998 she was scheduled for a meeting with a labor relation specialist to review her back pay calculations. She noted that she was instructed to take her break after the meeting and then return to the unit. Appellant indicated that she took her break in the Tour I break room, not her usual break room. She stated that Ms. Mitchell reprimanded her for taking her break in the wrong area and indicated that she would need to address appellant again on the proper place to take breaks. Appellant persuaded her not to give the talk because she felt she would be singled out. This matter is not a compensable factor of appellant's employment because it does not relate directly to her assigned duties but to an administrative matter on where employees should spend their breaks.

In a September 2, 1999 letter, appellant described other employment incidents. She stated that Mr. Perkins and other supervisors had verbally abused her on several occasions. Appellant noted that on November 17, 1998 she passed around a sign up sheet for purchasing a Christmas present for Mr. Perkins. She indicated that the next day Mr. Perkins verbally abused her for circulating the Christmas list and collecting money on his day off and accused her of taking pictures in the employing establishment. On November 19, 1999 appellant met with another supervisor and complained that Mr. Perkins was requiring employees to have written permission to use the restroom. She contended that Mr. Perkins was punishing the entire unit in an effort to alienate her from them by having them blame her for the actions he took. Appellant indicated that on July 13, 1999 she and other employees were verbally abused for returning five minutes late from break. She claimed that on June 28, 1999 several female Asian employees came back 15 minutes late from break but the supervisor joked and laughed with them. Appellant stated that on July 20, 1999 she was informed that she could only see one union steward, even though she was the only employee with that restriction. She indicated that on August 5, 1999 Mr. Perkins gave her unnecessary instructions, coming within a foot of her. Appellant stated that, on August 6, 1999, Mr. Perkins ordered her to put personal belongings under her case, even though no other employee received the same instructions. On August 12,

1999 appellant turned on a wall fan at the request of her coworkers and Mr. Perkins yelled at her, instructed someone else to turn off the fan and instructed her in a hostile voice she was not to do so in the future. She indicated that she had to go to the medical unit because the stress of the situation caused a headache. Mr. Perkins gave appellant permission to go to the medical unit but then ordered her to return to work after she arrived at the unit. When appellant returned to work, she went to take a vacant seat in an aisle next to a coworker. Mr. Perkins ordered her to return to her previous seat. Appellant went to sit in one seat but Mr. Perkins ordered her to sit at another case, yelling at her repeatedly to take the seat he assigned her. Appellant admitted that she yelled back, telling Mr. Perkins to leave her alone. She noted that Mr. Griffin pulled Mr. Perkins away from the scene. One coworker submitted a statement indicating that she had seen Mr. Perkins yell at appellant repeatedly to take a certain seat at the employing establishment, even though appellant had taken an empty seat next to her. This statement, however, only shows that appellant refused to obey an order from her supervisor. There is no evidence of record to show that the order was improper or harassment of appellant.

Appellant submitted copies of a form she had prepared for coworkers to sign in support of her claims of harassment and discrimination. She asked if coworkers had observed continual harassment of her by Mr. Perkins and Frances Webb. Appellant also asked if coworkers had seen others harassed by Mr. Perkins and Ms. Webb. Appellant described incidents, which she believed constituted harassment. Some of these incidents, however, were not related to appellant's performance of her assigned duties but to matters incidental to her performance of assigned duties, such as using a fan at work, or sitting in a certain seat. These incidents, therefore, would not constitute compensable factors. The incidents in which appellant claimed her supervisors yelled at her do not necessarily give rise to a finding that verbal abuse occurred. Although the Board has held that verbal abuse is a compensable factor of employment, this does not imply that every statement made in the work place will give rise to coverage under the Act.[5] Appellant also alleged that she was subjected to disparate treatment and racial discrimination. She submitted forms in which coworkers made checkmarks on forms prepared by appellant. These form answers can only be considered generalized statements in support of appellant's contention, which are insufficient to establish that the incidents occurred as she alleged. Appellant did not submit detailed statements from coworkers describing the incidents in detail, including the approximate date of the incidents and specific descriptions of what was said to appellant by the supervisors. In a July 21, 1998 decision, in an Equal Employment Opportunity complaint, the compliance and appeals coordinator found that appellant had not established that she was subjected to harassment or discrimination in the use of the restroom, or that she was harassed or stalked by her supervisor. Appellant, therefore, has not established that these incidents constituted error or abuse by her supervisors and, therefore, would be considered compensable factors of employment.

The only compensable factor of employment found in this case, therefore, was the reassignment of appellant to a different tour in violation of a previous settlement agreement. The issue then becomes whether this compensable factor of employment caused or contributed to appellant's emotional condition. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical

[5] *Christophe Jolicoeur,* 49 ECAB 553 (1998).

evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[6] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[7] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[8] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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. The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty[10] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

Appellant submitted a series of reports from Janet M. Stavosky, Ph.D. in clinical psychology. In a March 26, 1998 report, Dr. Stavosky addressed appellant's history of stress at work, particularly from unfair treatment, demotion from a supervisory position and a stormy relationship with her supervisor. Dr. Stavosky diagnosed major depression. She stated that appellant's resentment with the employing establishment might interfere with a return to work but added that there was no psychological disability that would prevent her return to work. In a June 10, 1998 report, Dr. Stavosky indicated that appellant complained that after her return to work on May 28, 1998 her supervisor began harassing her, calling her in for conferences and following her. Dr. Stavosky reported that appellant had increased symptoms of anxiety and dysphoria due to her return to work. In subsequent reports, Dr. Stavosky noted that appellant continued to complain of harassment at work, commenting that appellant felt that the denial of her Equal Employment Opportunity complaint created an atmosphere of "open season" on her. Dr. Stavosky discussed appellant's effort to cope with the stress and noted appellant's symptoms of anxiety and dysphoria. In a January 6, 1999 note, she diagnosed continuing clinical depression. Dr. Stavosky, however, did not relate appellant's emotional condition to the accepted compensable factor of employment. The medical evidence of record, therefore, fails to demonstrate that appellant's emotional condition is causally related to her employment. As a result, appellant has failed to meet her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated June 22, 2000 and October 12, 1999 are hereby affirmed.

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[6] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[7] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[8] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[11] *See William E. Enright*, 31 ECAB 426, 430 (1980).

Dated, Washington, DC
May 21, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member