

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA D. PRUITT and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 01-1660; Submitted on the Record;
Issued May 23, 2002*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty.

On October 6, 2000 appellant, then a 39-year-old supervisor customer service, filed a claim for occupational stress. In response to a December 14, 2000 request from the Office of Workers' Compensation Programs for further information, appellant provided a statement describing specific incidents and conditions of her employment to which she attributed her condition. Appellant also submitted medical reports addressing her condition, diagnosed as adjustment disorder with mixed anxiety and depressed mood and its relationship to her employment. The employing establishment offered no response to the Office's December 14, 2000 and February 15, 2001 requests to address appellant's allegations.

By decision dated March 14, 2001, the Office found that appellant had not substantiated any compensable factors of employment.

The Board finds that the case is not in posture for decision.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the 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. 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.¹

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

Verbal altercations and difficult relationship with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment.² Verbal altercations may constitute harassment, but for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.³

An employee's complaints concerning the manner in which a supervisor performs his duties or exercises his supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act.⁴ This principle recognizes that supervisors or managers in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.⁵ In this case, appellant alleged that her supervisors had numerous discussions with her regarding deficiencies in her job performance, was advised that improvement was needed and informed of the possibility of disciplinary actions. The exchange between appellant and her supervisor regarding her job performance is an administrative matter. Appellant has not shown with collaborate evidence that either her supervisors or the postmaster acted unreasonably or abusively or that she was yelled at or spoke inappropriate to.⁶

Many of appellant's allegations concern administrative or personnel matters of the employing establishment, which are not covered under the Act unless error or abuse is shown. Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁷

Appellant's complaint that her supervisors failed to provide her with adequate training concerns that employing establishment's decision on giving training, which is an administrative matter.⁸

Appellant alleged that her supervisors instructed her to work certain hours, shifts and to stay in the office until all the carriers under her supervision had returned. As noted above, disability is not covered where it results in such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. On the other hand, the Board has held that a change in an employee's duty shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance

² *Christopher Jolicoeur*, 49 ECAB 553, 556 (1998).

³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁴ *Christopher Jolicoeur*, *supra* note 2 at 557.

⁵ *See Alfred Arts*, 45 ECAB 530 (1994).

⁶ *See Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁷ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁸ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

of duty.⁹ In the present case, appellant has not submitted sufficient evidence to establish that the employing establishment effectuated a change in her duty shift in such a manner as to establish a compensable employment factor. Appellant did not provide specific details or sufficient corroborating evidence. Although appellant has asserted her belief that in assigning her work duties and shift, the employing establishment erroneously or abusively instructed her to work without pay and violated labor agreements, appellant has not provided sufficient evidence to establish such action on the part of the employing establishment. Appellant has the burden of proof to establish that she sustained a claimed condition in the performance of duty and as part of that burden she must establish the employment factors alleged to have caused or aggravated the claimed condition.¹⁰ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant alleged that her complaint against another supervisor's manner of dressing was misconstrued during conversations among other supervisors and was handled in an inappropriate or unreasonable manner. Appellant stated that, on August 1, 2000, she had asked Supervisor Davis to speak with Supervisor Costello about a dress she felt was too short and that she had told Supervisor Davis that she wished to remain nameless as she felt uncomfortable with the situation. Supervisor Costello subsequently informed Supervisor Gonzales that appellant had complained about her dress, and Supervisor Gonzales, in turn, told other employees that appellant had filed sexual harassment charges against her, although she had not, and this increased hostility among supervisors. There is insufficient evidence that a hostile environment was created by Supervisor Costello as a result of Supervisor Gonzales being talked to about her attire. The Board notes that although appellant had asked that Supervisor Davis keep her identity secret as she felt uncomfortable with the situation, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to this matter. Appellant has not shown that the employing establishment's actions with respect to this matter would rise to the level of error or abuse. Thus, appellant has not established a compensable employment factor under the Act with regard to administrative matters.

Appellant asserted that the union representatives questioned her regarding actions she had taken or been instructed to take, against certain employees under her supervision. These included instances such as tracking down a carrier's absences, issuing disciplinary actions, enforcing a dress code, and actions concerning grievances. She additionally asserted that the union representatives acted in a hostile and threatening manner towards her. Appellant has also alleged that she was told, in her capacity as a supervisor, to take certain disciplinary actions against her employees regarding such matters as inadequate performance or inappropriate behavior or dress, some of which she disagreed with; told to work her employees faster; instructed to take action against a poorly performing employee; and being told to meet with a union representative regarding a grievance. Appellant's actions taken in her supervisory capacity and under the direction of her supervisors relate to her regular or specially assigned duties and, thus, her reaction to the actual performance of her duties as a supervisor would be compensable under *Lillian Cutler*.¹¹ Accordingly, the Board finds that appellant has established

⁹ See *Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

¹⁰ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987) (finding that a claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors).

¹¹ See *supra* note 1.

compensable factors of employment relating to her regular and specially assigned job duties. The Board notes, however, that appellant's allegations that the union representatives treated her in a hostile and threatening manner is not supported as she has provided no corroboration that describes such incidents in detail, including dates, individuals involved and subjects of the discussions leading to the perceived behavior.¹²

As appellant has substantiated compensable employment factors, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.¹³ After such development as it deems necessary, the Office should issue an appropriate decision.

The March 14, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
May 23, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² *Supra* note 6.

¹³ *See William P. George*, 43 ECAB 1159 (1992).