

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CORDIA M. FORD-ALLERTON and U.S. POSTAL SERVICE,
MT. BETHEL POST OFFICE, Marietta, GA

*Docket No. 03-400; Submitted on the Record;
Issued July 8, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant, a 56-year-old clerk, filed a notice of occupational disease and alleged that she developed major depression due to factors of her federal employment, including harassment on a daily basis from 1992 to 1998, discrimination, retaliation, repeated transfers and her forced return to work outside her doctor's restrictions and her supervisor's statements to coworkers that she was drunk.¹

The Office requested additional factual and medical evidence on July 1, 1998. By decision dated April 15, 1999, the Office found that appellant had failed to substantiate a compensable employment factor and had not established that she sustained an injury in the performance of duty. Appellant requested an oral hearing on May 6, 1999. By decision dated February 9, 2000, the hearing representative affirmed the Office's April 15, 1999 decision.

Appellant requested reconsideration on February 2, 2001 and submitted additional new evidence. By decision dated March 8, 2001, the Office denied appellant's request for a merit review, finding that the submitted evidence was of a repetitious and cumulative nature. She requested review by the Board and by decision dated July 6, 2002,² the Board remanded appellant's claim for review of the merits. The facts and circumstances of the case as set forth in

¹ The Office of Workers' Compensation Programs accepted that appellant sustained a contusion of the left knee, laceration of both legs and low back strain due to an April 24, 1987 employment injury. She sustained an aggravation of a cervical condition due to a March 23, 1992 employment injury. The Office further accepted a consequential depression due to appellant's pain and limitations due to her employment injuries in February 1993 and terminated benefits for this condition on October 3, 1994.

² Docket No. 01-1500 (issued July 6, 2002).

the Board's prior decision are adopted herein by reference. By decision dated August 29, 2002, the Office denied modification of its February 9, 2000 decision.

The Board finds that this case is not in posture for a 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 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 to 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 or to hold a particular position.³

In support of her claim for an emotional condition, appellant alleged that she was forced to return to work on December 27, 1997 in violation of her physician's orders. The employing establishment offered appellant a limited-duty job assignment as a modified clerk on December 17, 1997. The position entailed working four hours a day for the first month and increasing hours in the subsequent months with limitations. Appellant accepted the position on December 17, 1997 and stated that the position violated her doctor's orders, noting that she had driving restrictions. However, her main objection to the position appeared to be the location and the craft. Appellant's attending physician, Dr. Joseph Khouri, a Board-certified internist, completed a report on January 6, 1998 and stated that she was totally disabled due to stress. He diagnosed fibromyalgia, anxiety, depression and epigastric pain with nausea and vomiting, stress related. Dr. Khouri did not provide any work restrictions, noting that appellant was unable to cope with her work either physically or psychologically. Appellant contacted the Office and stopped work in this position on January 23, 1998. She has not submitted any evidence that she was forced to return to the position offered by the employing establishment. There was no finding of suitable work by the Office and she accepted the position of her own volition. Without evidence of coercion on the part of the employing establishment, appellant has failed to establish this element of her claim.

Appellant attributed her emotional condition to the refusal of the employing establishment to respect her medical limitations due to her accepted employment injury of 1987. She alleged that she was required to stand eight hours a day in violation of her work restrictions in 1998. Appellant further stated that she did not receive accommodations due to her injury such as a parking space, lumbar chair or neck support. 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.⁴ The record contains an April 9, 1998 report from Dr. Rafael V. Urrutia, Jr., a Board-certified orthopedic surgeon, indicating that appellant could work four hours a day with restrictions. The employing establishment offered appellant a light position within those restrictions on May 15, 1998, which listed her hours as 9:00 a.m. to 5:30 p.m., eight hours a day, as well as stating that the position was part time. Appellant accepted the

³ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

⁴ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

position noting her acceptance was under duress as she could only work part time and should receive compensation for the remainder of the day. On the reverse of appellant's claim form, her supervisor, W.D. Christie, indicated that appellant's regular work hours were from 9:00 a.m. to 1:00 p.m. or four hours a day. Appellant has not submitted evidence establishing that she was required to work more than four hours of day, nor has she established that she had to stand excessively in 1998 in violation of her work restrictions and has, therefore, failed to substantiate this compensable factor of employment.

Appellant stated that the employing establishment refused her medical documentation. She stated that the postmaster did not allow her supervisor to sign her leave slips and that the employing establishment maintained a special file for her medical documentation and did not forward these forms to the injury compensation office.

Randall Dixon, Jr., appellant's direct supervisor, testified on November 27, 1995. He stated that he was not allowed to sign appellant's leave slips and she was the only employee under his supervision for whom he could not approve leave. Mr. Dixon stated that he believed that this was due to "personal" animosity between appellant and the Postmaster Garth Cain. He stated that appellant was required to submit a Form CA-17 every time she visited her doctor and that he placed them in her folder rather than forwarding the forms to injury compensation. Mr. Dixon further stated that he believed that management attempted to force appellant to quit, through leave refusal and monitoring her restroom usage. He stated that he personally monitored appellant's restroom usage. In a recommended bench decision, the Equal Employment Opportunity (EEO) Commission found that, in regard to the requirement that Mr. Cain sign her leave slips rather than her supervisor, appellant had established a requirement that was not imposed on other employees and that this did amount to a hardship when appellant was at different facilities from Mr. Cain establishing disparate treatment. The bench decision further found that appellant was required to submit Form CA-17's, with every visit to a physician, which was not a requirement imposed on other employees. The bench decision concluded that the employing establishment was discriminating against appellant because of her disability due to these additional requirements.

Regarding appellant's allegations that the employing establishment wrongly addressed leave issues, improperly assigned work duties and unreasonably monitored her activities at work, the Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.⁵ As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or 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.⁶

⁵ 5 U.S.C. §§ 8101-8193; see *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gates*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-57 (1988).

⁶ *Martha L. Watson*, 46 ECAB 407 (1995).

The Board finds, based on the evidence of record, including the bench decision and the testimony of Mr. Dixon, that appellant has established that the employing establishment acted unreasonably by singling her out for additional leave usage requirements as well as additional documentation for work restrictions. The Board further finds that appellant has established that the employing establishment unreasonably directed additional monitoring of her activities in an attempt to force her from her position based on the testimony of Mr. Dixon, her supervisor. He asserted that he was directed to monitor appellant's restroom usage in an attempt to goad appellant into quitting her job.

Appellant asserted that she was transferred four times. The EEO bench decision found that appellant's transfers were not adverse actions and were within the employing establishment's discretion. She did not submit any evidence establishing that her transfers were error or abuse on the part of the employing establishment.

Appellant asserted that her supervisor asked both her and coworkers whether she was drunk on January 14, 1998 based on her frequent vomiting at work. She stated that a supervisor, Nancy Parker, accused her of drinking at work and being drunk. Ms. Parker also questioned appellant's coworkers regarding whether appellant was drunk or had been drinking at work. In a statement dated October 17, 1998, Angela Benton, a coworker, stated that Ms. Parker asserted that appellant was drunk and asked if Ms. Benton smelled liquor or agreed that she was drunk. Karen R. Holton completed a similar statement on October 15, 1998 and stated that appellant did not smell of alcohol. Although appellant did submit affidavits of coworkers, these do not rise to the level that the employing establishment unreasonably monitored whether her frequent vomiting appeared to be due to alcohol abuse. As she has not established error or abuse in this administrative function, appellant has not established that this is a compensable factor of employment.

Appellant stated that she was verbally abused. 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.⁷ Appellant did not provide any specific examples of verbal abuse. She has the burden of submitting a detailed description of the employment factors or conditions which she believes caused or adversely affected the condition or conditions for which compensation is claimed.⁸ Appellant has not described specific incidents of verbal abuse and has not submitted corroborative evidence regarding the specific incidents of verbal abuse to which she attributed her emotional condition. Therefore, she has not substantiated verbal abuse as a factor of her federal employment.

Appellant attributed her emotional condition to harassment and discrimination. 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

⁷ See *Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.⁹ As noted above, appellant has established that the employing establishment discriminated against her through abusive administrative actions and has established this factor of employment.

In the present case, appellant has identified compensable factors of employment with respect to discriminatory leave and medical documentation requirements as well as unreasonable monitoring of her activities at work in an attempt to force her to quit her job. However, appellant's burden of proof is not discharged by the fact that she had established employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors.¹⁰

In a report dated May 13, 1998, Dr. Ross F. Grumet, a Board-certified psychiatrist, diagnosed job-related depression and anxiety associated with pain and job harassment. He did not specify the factors which he believed contributed to appellant's diagnosed condition. Dr. Grumet completed a report on May 28, 1998 and noted that appellant felt singled out by her supervisors for special rules. He diagnosed major depression, generalized anxiety, conversion symptoms and adjustment disorder with paranoid features. In a report dated October 26, 1999, Dr. Grumet attributed appellant's condition to job harassment, inappropriate supervision and being singled out for special scrutiny. He stated that appellant's psychiatric illness and disability resulted from conditions of her employment. These reports contain a history of injury, diagnosis and an opinion that appellant's emotional condition was caused by the compensable factors of discrimination through administrative abuse. While these reports are insufficient to meet appellant's burden of proof as they do not contain detailed findings of accepted employment factors and medical rationale in support of the opinion on causal relationship, they do raise an uncontroverted inference of causal relation between appellant's accepted employment factors and her emotional condition and are sufficient to require the Office to undertake further development of appellant's claim.¹¹

On remand the Office should further develop the medical evidence by requesting that Dr. Grumet submit a rationalized medical opinion on whether there is a causal relationship between appellant's diagnosed emotional condition and her accepted employment factors. After this and such other development as the Office deems necessary, the Office should issue a *de novo* decision.

⁹ *Alice M. Washington*, 46 ECAB 382 (1994).

¹⁰ *See William P. George*, 43 ECAB 1159, 1168 (1992).

¹¹ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

The August 29, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
July 8, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member