

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JODY L. MILLER and U.S. POSTAL SERVICE,
PROCESSING & DELIVERY CENTER, Santa Ana, CA

*Docket No. 03-717; Submitted on the Record;
Issued July 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she developed an emotional condition due to factors of her federal employment.

Appellant, a 44-year-old mailhandler equipment operator, filed a notice of occupational disease on December 28, 1999, alleging work trauma due to ongoing and escalating mistreatment by management. The Office of Workers' Compensation Programs denied appellant's claim by decision dated February 1, 2001 finding that appellant had substantiated that she was overworked during the 1997 Christmas season, but failed to submit the necessary medical evidence to establish that her emotional condition was employment related. Appellant requested a review of the written record on March 16, 2001. By decision dated August 7, 2001, the hearing representative affirmed the Office's decision finding that the evidence failed to establish that appellant sustained an emotional condition "arising out of compensable factors of employment." Appellant requested reconsideration on July 31, 2002. By decision dated November 6, 2002, the Office denied modification of its prior decisions.

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed 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 or to hold a particular position.¹

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

Appellant attributed her emotional condition to the fact that the employing establishment moved her from her bid position despite the fact that she was the senior mailhandler equipment operator. On August 10, 1998 appellant received a letter abolishing her job. On August 21, 1998 her supervisor, Raymond Morales, denied her grievance on this issue. On September 22, 1999 appellant again received notice that her bid assignment would be abolished effective October 8, 1999 and that she would become an unassigned regular mailhandler equipment operator. In an October 7, 1999 letter, the employing establishment assigned the position of dock technician to David Frame as “the only qualified dock technician on Tour One.” Appellant submitted a grievance settlement dated August 8, 1999 for Mr. Frame, her coworker, noting that he was awarded the position of mailhandler equipment operator rather than a mailhandler technician. She alleged that her coworker had less seniority and was not entitled to retain the position. In a grievance summary, the employing establishment stated that appellant was the junior employee and that the workload had changed so that the employing establishment no longer needed both the level 5 equipment operator and the level 5 dock technician.

Appellant alleged that Mr. Morales allowed her coworkers to go home early and take leave when the board was full. She stated that Mr. Morales denied her requests before she had a chance to fully voice them and noted that she liked to go home early on Fridays and that it was not difficult to find a truck replacement. Appellant stated that Mr. Morales complimented her coworker on his work, but not appellant. She alleged that Mr. Morales denied her request for annual leave, when he had previously accommodated her coworker in a similar situation. Appellant asserted that Mr. Morales did not allow her to drive coworkers to the doctor because she enjoyed this activity. Mr. Morales stated that appellant frequently turned down requests to drive coworkers and that she was merely one of several employees allowed to do so. Appellant stated that Mr. Morales reviewed her absence analysis after the July 24, 1998 employment injury. She stated that Mr. Morales gave her new job limitations. Appellant alleged that Mr. Morales improperly scheduled her makeup overtime. She sought help through Mr. Morales in December 1997 who allegedly stated, “Everybody [ha]s got to do some work once in a while.” Mr. Morales denied this allegation. Appellant swore at Mr. Morales. On January 14, 1998 appellant received a letter of warning from Mr. Morales for “Unacceptable Conduct.” Appellant stated that the letter of warning was retracted. She stated that she received an official discussion from Mr. Morales for attendance on August 22, 1998. Appellant stated that a letter of warning from 1996 was still in her personnel file on September 15, 1998 and that this letter should have been removed. Mr. Morales stated that he requested that appellant’s letter of warning be removed and stated that it was personnel’s responsibility to do so. He indicated that he did not know why the removal was not done in a timely manner. On September 25, 1998 appellant did not receive her breaks. Mr. Morales said that this was a misunderstanding. Mr. Morales denied appellant’s allegations regarding leave usage, improper assignment of work duties and the denial of breaks. Appellant did not submit any evidence to substantiate her allegations.

Regarding appellant’s allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations, wrongly addressed leave and improperly assigned work duties, 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.² 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.³ Appellant did not submit any evidence substantiating that the employing establishment acted unreasonably in assigning duties, addressing leave requests or administering discipline. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.⁴ Therefore, she has not substantiated these factors of employment.

However, appellant has alleged and Mr. Morales has agreed that appellant's 1996 letter of warning should have been removed from her file. Mr. Morales agreed that this letter was not removed from appellant's file in a timely manner. As appellant has substantiated that the employing establishment erred in failing to remove the 1996 letter of warning, she has established error on the part of the employing establishment in this administrative action.

She also alleged discriminatory actions by Mr. Morales through his administrative actions. 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.⁵ Appellant has not submitted any evidence substantiating her allegations of harassment or discrimination and has therefore failed to substantiate this compensable factor of employment.

Appellant stated that she was required to work beyond her restrictions. Appellant alleged that the employing establishment did not accommodate her doctor's orders to work on Tour 2 away from Mr. Morales. 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.⁶ Appellant has not submitted medical evidence that she was required to work beyond her physical limitations. Furthermore, appellant has not substantiated that Mr. Morales' actions were such to support her claim for an emotional condition and result in a work injury. Therefore, appellant has not substantiated that she was required to work beyond her restrictions.

² 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).

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

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

⁵ *Alice M. Washington*, 46 ECAB 382 (1994).

⁶ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

She stated that Rob Jeffrey referred her for a fitness-for-duty examination. Appellant also alleged that the employing establishment failed to provide her with a Form CA-16 in a timely manner. Regarding appellant's allegations that the employing establishment mishandled her compensation claim and wrongly failed to provide her with a Form CA-16 and wrongly referred her for a fitness-for-duty examination, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.⁷ Appellant did not submit sufficient evidence that she sustained a traumatic injury and that a Form CA-16 authorizing medical care was withheld or denied.

On November 20, 1999 appellant had a verbal disagreement with a coworker, Waldo Lopez. Appellant was very upset and someone called 911 on her behalf. The paramedics informed appellant that they could do nothing for emotional stress and left. Jay Cosper, manager of distribution operations, told appellant to either go home sick or go back to work. Appellant requested sick leave and a coworker drove her home. The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁸ Appellant attributed her emotional condition, not to the discussion with Mr. Lopez, but rather to the "callous" actions of Mr. Cosper. The Board finds that Mr. Cosper's assessment that appellant should either return to work or utilize sick leave, is not a statement giving rise to coverage under the Act. This comment was not verbal abuse and Mr. Cosper allowed appellant the opportunity to utilize leave if she wished. Therefore appellant has not substantiated this event as a compensable factor of employment.

Appellant alleged that in December 1997 there was increased volume due to Christmas and consequentially increased workload. Mr. Morales agreed that there was increased volume of mail. The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements is compensable. The Board has held that employment factors which would be covered under the Act include an unusually heavy workload.⁹

In the present case, appellant has established a compensable factor of employment with respect to a heavy workload in December 1997 as well as in the error or abuse of the employing establishment in failing to timely remove a disciplinary letter from her personnel file. However, appellant's burden of proof is not discharged by the fact that she had established an employment factor 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 factor.¹⁰

⁷ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

⁸ See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

⁹ See *George F. Kennedy*, 35 ECAB 1151, 1155 (1984).

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

In support of her claim, appellant submitted medical evidence from Dr. Barbara A. Sziraki, a clinical psychologist, including a report dated February 18, 2000. Dr. Sziraki found that appellant's diagnosed condition of adjustment disorder with anxiety and depressed mood was due to accumulative stress and harassment, gender bias and racial prejudice at work. She noted that appellant described her heavy workload in December 1997 as well as the many alleged employment incidents which the Board has not accepted as employment related. Dr. Sziraki did not clearly attribute appellant's emotional condition to either accepted employment factor. In the majority of Dr. Sziraki's reports, she focused on a history of alleged harassment and discrimination. As Dr. Sziraki did not provide a clear opinion that appellant's accepted employment factors of a heavy workload in December 1997 or the error in timely removal of the letter of warning were sufficient to cause or contribute to appellant's emotional condition, her reports are not sufficient to meet appellant's burden of proof and the Office properly denied appellant's claim.

The November 6, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member