

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELL H. OTSUKA and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Hilo, HI

*Docket No. 02-1496; Submitted on the Record;
Issued May 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On February 9, 2001 appellant, then a 46-year-old supervisor, filed an occupational disease claim (Form CA-2) alleging that her stress was employment related. In an attached memorandum, she attributed her stress to increased responsibilities, insufficient personnel to perform duties and discrimination and unfairness by Postmaster Sharon Rapoza.

In support of her claim, appellant submitted documentation including medical reports, stamp requisition and destruction forms, flow charts, her last stand-up session-mails, authorized leave slips, revenue lists, employee accident profiles and observations, positions descriptions, list of carrier overtime hours, reports of unsafe practices, staff schedules, an April 23, 1996 letter informing appellant she owed the employing establishment \$755.00 for inventory shortage, witness statements and a 10-page statement outlining her allegations email messages regarding "CBMS DTS" for December 13, 2000 and nonbargaining OT, November 29, 2000 minutes for the Safety and Health meeting, "S.O.P. [Standard Operation Procedure(s)], Compliance/Implementations for New Practices or Revisions to Old Practices, Narrative," supervisors hours for September 23, 2000 to January 5, 2001, Congressional and Equal Employment Opportunity (EEO) complaint correspondence, highway contract reports/surveys, directives, employee posting/evaluations, Kim Nahale's report for the downtown station accountability for Hilo, ETC Summary Reports and PS forms 3930 for the period January 6 to February 16, 2001 and "Some copies of 'Stand-up Sessions' (weekly requirement) to give an idea as to what it is -- a gathering for info[rmation]."

In a November 29, 2000 memorandum by Tom Solywoda, acting chairperson of the Safety and Health Committee, noted that appellant "does n[ot] seem to feel that Safety and Health Meetings are very important." He noted that appellant sent a custodian to a meeting as she had to issue stamps and she could not do everything in eight hours. He attributed Hilo's safety problems to the "lack of involvement by its supervisors."

In an October 13, 2000 email, Janie Maldonado, an employees, noted that, “when you asked me about [appellant’s] hours and Alton came into my office and we continued to talk about her hours, I felt uncomfortable with Alton there.” Regarding appellant’s work hours, Ms. Maldonado stated that “by her swiping, she is showing you her honest days work. I know you both go around and around about this. [Appellant’s] point is she feels that she should be paid for the work she does” and noted that “every day brings on some new challenges that consume her time” and that, “before she knows it, it is time to go, but because there is unfinished work to be done, she stays and because she is still working, some of her time, she gets paid for and sometimes she deletes her time and adjust to get less paid hours.” She also noted there was tension between appellant and Mr. Uyetake.

In a December 15, 2000 email, Ms. Rapoza reminded appellant to take a lunch break each day.

Medical evidence submitted by appellant included records diagnosing anxiety for the period December 1, 1999 through March 14, 2001 and reports December 2, 1999, January 8, 2000 and February 7, 2001 by Dr. Craig Y. Shikuma, an attending Board-certified internist. In a January 19, 2001 report, appellant was diagnosed with depression and anxiety due to her work and insomnia. Appellant related “difficulty at work with increasingly demanding schedule since December of 1999” and the increased workload required by her supervisor. In his reports dated December 2, 1999 and January 8, 2000 and February 7 and 28, 2001, Dr. Shikuma diagnosed chronic stress which he attributed to appellant’s “chronic stress prolonged beyond reasonable expectations at work.”

In a statement dated March 9, 2001, Jan Nishioka, a window clerk, noted that Ms. Rapoza had instructed her “to change supervisor Alton Uyetake’s hours to reflect two hours of overtime per day (though I cannot remember how many days) for the week” and also told Ms. Nishioka “not to mention it to [appellant].” Appellant noticed the change in Mr. Uyetake’s hours and questioned Ms. Nishioka why the computer times failed to balance with the manual work sheet.

Ms. Maldonado stated in a March 13, 2001 letter that appellant had many tasks which included working “on EEO’s, Congressional and Senatorial complaints filed by employees and 991’s for clerks who have applied for the 204B program.” She noted:

“Working closely with [appellant], I know that this workload was overwhelming for her. She would confide in me about this. Problems occurred at the Downtown Station from time to time and [appellant] went there whenever possible. She would issue stamps to the window clerks at the Main Office and the Downtown Office. Supervising both [employing establishments] seemed overwhelming for [appellant].”

In a March 30, 2001 report, Dr. Shikuma diagnosed “chronic stress prolonged beyond reasonable expectations at work coupled with cumulative bouts of situational stress encouraged by postmaster.”

In a letter dated April 8, 2001, appellant submitted a memorandum dated March 2001 in which two individuals were promoted to supervisory positions at the employing establishment

and she was promoted to postmaster at Papaikou, Hawaii and a copy of a revenue list showing the employing establishment as third in revenue. Appellant noted that these supervisory positions which were filled were the cause of her stress as they were unfilled while she was supervisor.

In an undated letter received on April 9, 2001, appellant attributed her stress was due to the expectations Ms. Rapoza placed on appellant which she alleged “grew more and more unreasonable.” She also attributed her stress to Ms. Rapoza holding her accountable for the failed CMRS report when Ms. Rapoza, as her manager, should have been responsible since no one had been trained in the operational procedures at the time she took accountability in September 2000. Appellant noted that she requested Ms. Miyose to print out instructions for the CMRS report on December 19, 2000 and that she was unaware that this had not been done. She attributed her stress to Ms. Rapoza “threatened to discipline” her due to appellant’s absence from the November 29, 2000 Safety and Health meeting when she had to work at the Downtown station on November 29, 2000 to issue stamps.

In an April 23, 2001 letter, the employing establishment responded to appellant’s allegations. Ms. Rapoza acknowledged that there had been vacant supervisor positions, but that the positions were filled when by acting supervisors when necessary. She noted that the downtown office did not require a full-time supervisor and “can do without a supervisor much of the time.” Regarding her volunteering to cover the downtown station, Ms. Rapoza noted appellant “used in excess of the authorized 12 hours overtime per week” and that she was required to “take the stamp stock accountability and oversee the operation to ensure that the duties were completed as assigned.” On January 8, 2001 she told appellant regarding the importance of performing the CBMS report and that having a “missed” or “early” collection scan could lead to discipline. Ms. Rapoza instructed appellant to ensure compliance by reviewing the procedures with the individual assigned to close the office that day. She stated that no disciplinary action was taken against appellant even though this was not the first time that appellant did not follow the CBMS procedures. As to overtime, Ms. Rapoza stated that she had “many discussions with [appellant] about working beyond eight hours just to complete her daily assignments and cutting her lunch schedule to leave the office earlier.” She noted that appellant continued to work longer hours on days she worked instead of working on her nonscheduled days to get overtime. Ms. Rapoza noted in 1999 appellant’s overtime was “17.09 overtime hours from October 23 [to] November 5, 1999; 16.61 overtime hours from November 6 [to] November 19, 1999; and 25.27 overtime hours from November 20 [to] December 17, 1999” while her overtime in 2000 was 24.45 for September 23 to October 6, 2000; 22.30 hours for October 7 to 20, 2000; 39.01 hours for October 21 to November 3, 2000; 21.40 hours for November 4 to November 17, 2000; and 17.40 hours for November 18 to December 1, 2000. Regarding training, she noted that the budget does not provide for training that does not relate to the operations supervised. Appellant was denied the opportunity for rural training as she was not a delivery supervisor. She stated that appellant “was concerned about the daily financial and timekeeping reports that had to be completed for the Downtown Station” and she instructed appellant to have Ms. Miyose complete them as she had previous experience.

By decision dated February 21, 2002, the Office of Workers’ Compensation Programs denied appellant’s claim on the basis that she failed to establish any compensable factors.

The Board finds 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 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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated February 21, 2002, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

Appellant alleged discrimination on the part of her supervisor contributed to her claimed stress-related condition. Specifically she alleged that Ms. Rapoza acted unfairly by granting Mr. Uyetake training and ensuring he was credited with additional work hours. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, 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.⁸ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor.⁹ While appellant submitted evidence that Mr. Uyetake was granted training and credited with extra time, she has not shown that Ms. Rapoza's actions constituted harassment or discrimination against her. Appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided insufficient evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegations that she was denied training by her supervisor. The Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act unless the refusal constitutes error or abuse.¹¹ Appellant has not submitted any evidence establishing that the refusal of rural or other training requests were an abuse or error on the part of the employing establishment.

Appellant alleged stress was due to the amount of work she had to perform. The Board has held that overwork constitute be a compensable factor of employment.¹² Appellant described her regular and specially assigned work duties as a supervisor responsible at two post offices. The substance of her work was not disputed. The Board finds appellant has established a compensable factor of employment. Appellant has submitted evidence in the form of witness statements and time records supporting her allegations. In addition, Ms. Rapoza supported appellant's allegation of overwork by submitting dates and times appellant worked overtime in

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁰ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹¹ *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

¹² *Bobbie D. Daly*, 53 ECAB ____ (Docket No. 01-2115, issued July 25, 2002); *Robert W. Wisenberger*, 47 ECAB 406 (1996).

her April 23, 2001 letter. Accordingly, appellant has identified a compensable factor of employment.

As appellant has established a compensable factor of her employment, the Office must base its decision on an analysis of the medical evidence.¹³ Since the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded for that purpose.¹⁴

The February 21, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further consideration consistent with the above opinion.

Dated, Washington, DC
May 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹³ *Id*; *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, *supra* note 5.

¹⁴ *See generally Dodge Osborne*, 44 ECAB 849 (1993).