U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA MEDINA and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

Docket No. 03-674; Submitted on the Record;
Issued May 2, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On March 2, 2000 appellant, then a 43-year-old mark-up clerk, filed an occupational disease claim alleging that she sustained work-related stress due to factors of her federal employment. She stopped work on February 28, 2000 and returned to work on March 3, 2000.

By decision dated July 28, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office found that appellant had not established any compensable employment factors.

On August 24, 2000 appellant requested reconsideration of her claim. On September 29, 2000 appellant filed a second claim for an emotional condition due to factors of her federal employment.

By decision dated August 28, 2001, the Office denied modification of its July 28, 2000 decision. In a letter accompanying the decision, the Office informed appellant that it had incorporated her August 31, 2000 occupational disease claim into her March 2, 2000 claim.

By letter dated April 4, 2002, appellant again requested reconsideration. In a decision dated May 21, 2002, the Office denied modification of its August 28, 2000 merit decision.

Appellant again requested reconsideration on August 15, 2002. By decision dated November 20, 2002, the Office again denied modification.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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]

Appellant contended that she sustained anxiety and stress related to her work on February 28, 2000. She became anxious at work on that date and requested that her manager, Valerie Kelley, release her early. Appellant stated that Ms. Kelley told her she could go home when the mail volume decreased, but instead let other employees go home. When appellant requested leave for the next day, Ms. Kelly told her to "save your ink." Appellant related that when she returned to work on March 2, 2000 her supervisor, Rachel Bennett, requested that she complete another leave slip because Ms. Kelly had denied a prior request. Appellant noted that her request for leave was subsequently approved. She stated that on March 2, 2000 Ms. Bennett did not believe that she was ill and referred her to the Employee Assistance Program.

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[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.*

Although the handling of leave requests at work is generally related to the employment, they are administrative functions of the employer and not duties of the employee and, therefore, not compensable factors of employment absent a demonstration of error or abuse by the employing establishment.[7] In this case, appellant has not submitted sufficient evidence showing error or abuse in an administrative function by the employing establishment in denying her leave requests. Ms. Kelly, appellant's manager, explained why she denied appellant's request for leave on February 28, 2000. In statements dated March 9 and April 13, 2000, Ms. Kelley related that she believed that appellant was joking when she requested leave on February 28, 2000. Ms. Kelley stated:

> "Appellant] walked up to the desk I was sitting at and stated more to herself than to me 'I need a day off tomorrow. I do [not] know if I want to take annual leave or sick leave. I think I will take sick leave.' I assumed that she was kidding and as she began filling out a leave slip, I said to her (laughing) '[s]ave your ink' at which time she laughed also."

Appellant, therefore, has not established a compensable factor of employment with respect to her denied leave request.

Appellant alleged that she experienced harassment and discrimination by her supervisors. She related that certain employees received preferential treatment, especially in setting typing goals. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[8] 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.[9] In this case, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.[10] In support of her claim, appellant submitted statements from coworkers who generally contended that managers discriminated against employees on the basis of race and/or sex and that the work environment was stressful. Monique Duhon-Talley stated that appellant was "targeted" by management because she complained about the preferential treatment given to certain employees by managers. Ms. Duhon-Talley, however, did not provide any specific examples in identifying the time, place or manner by which appellant was harassed by management.

[7] *John Polito*, 50 ECAB 347 (1999).

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

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[10] *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).

Additionally, the employing establishment denied that appellant was harassed at work. In a statement dated June 5, 2000, Ms. Kelley related:

> "[Appellant] has in no way been singled out, retaliated against or discriminated against. She is assigned the same duties as the other clerks in the Unit. [Appellant] is not required to work overtime or asked to do anything the other clerks are not asked to do. She has never been denied leave requests."

In this case, while appellant submitted witness statements generally stating that certain employees, including appellant, were treated less favorable than others, the statements lack the specificity necessary to establish harassment or discrimination on behalf of managers with the employing establishment. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegations that other employees received transfers, that she was detailed and then returned, that management stopped placing her in the position of acting supervisor[11] and that she and other employees had to inform management about doctor's appointments, the Board finds that these allegations relate 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 Act.[12] Although the handling of transfers, details, leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[13] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[14] In this case, appellant has not submitted any evidence that the employing establishment committed error or abuse in an administrative or personnel matter. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant further related that on September 29, 2000 she had a panic attack and that a coworker who tried to help her was "pushed twice violently" by Ms. Kelley. She stated that Ms. Kelley received a suspension. Appellant, however, has not submitted any factual evidence in support of this allegation.[15]

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[11] Ms. Kelley, in a statement dated June 5, 2000, related that when supervisors were on leave appellant "is utilized" as an acting supervisor.

[12] *See Gareth D. Allen*, 48 ECAB 438 (1997); *Anna C. Leanza*, 48 ECAB 115 (1996); *Donna J. DiBernardo*, 47 ECAB 700 (1996); *Joe L. Wilkerson*, 47 ECAB 604 (1996).

[13] *Id.*

[14] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[15] Appellant noted that the Office had not discussed whether stress caused or aggravated her thyroid condition. However, in order for the Office to address the medical evidence in the record appellant must first established a compensable employment factor.

In a statement dated August 15, 2002, appellant described her work environment and noted that she was provided with gloves and masks to prevent anthrax after September 11, 2001. She, however, did not specifically attribute her stress to her work environment but instead to her frustration with the poor performance of certain employees. However, appellant's frustration with her coworkers amounts to a desire to work in a different environment and is not compensable under the Act.[16]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[17]

The decisions of the Office of Workers' Compensation Programs dated November 20 and May 21, 2002 are affirmed.

Dated, Washington, DC
May 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[16] *Daniel B. Arroyo*, 48 ECAB 204 (1996).

[17] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).