

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERYL L. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Idabel, OK

*Docket No. 03-1218; Submitted on the Record;
Issued September 26, 2003*

DECISION and ORDER

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

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

On June 27, 2001 appellant, then a 45-year-old postmaster, filed a claim alleging that she developed an emotional condition as a result of a stressful work environment which resulted in anxiety and depression. She stopped work on December 6, 2000 and returned to regular duty on May 17, 2001.

Appellant submitted several statements in which she made the following allegations: (1) that she was harassed after a November 26, 1999 telephone call to the inspection service to report an incident of a rural carrier suspected of throwing mail away; (2) that she was wrongfully issued a letter of warning on April 26, 2000 which was affirmed on May 24, 2000; (3) that she was wrongfully investigated for altered time cards, improper scheduling, changing the lock outside the inspection lookout gallery and improper compensation to subordinates; (4) that she was harassed by manager, Ed Dortch, when he indicated to a coworker that appellant had abandoned her office for a job interview; (5) that she was harassed by Mr. Dortch after the release of the workplace climate survey; (6) that she was harassed by Mr. Dortch, when he allegedly encouraged other employees to file grievances against her; and (7) that her promotion was wrongfully rescinded based on the results of an investigation into her conduct.

An interview with a postal inspector, dated March 21, 2000, detailed appellant's oversight of postal operations at her branch. She indicated that, during the week of March 16, 2000, when she was in training in Houston, Texas, she was contacted by Karen Reed, a subordinate, regarding missing keys to the front door of the employing establishment. Ms. Reed indicated that, because the keys were missing, she had the front door locks and the locks to the inspector's entrance changed. Appellant indicated that Ms. Reed should not have changed the locks but that she would address the situation when she returned on March 20, 2000. Appellant indicated that on November 29, 1999 the inspector came to the employing establishment to investigate a rural carrier who was allegedly throwing away mail and also to determine if

Ms. Reed was working off the clock under appellant's supervision. The inspector indicated that appellant denied permitting any of her employees to work off the clock; however, they had witnessed Ms. Reed in mid November, clock out at 2:00 p.m. and then return to work alongside appellant at 6:00 p.m. Appellant denied this allegation and indicated that she was being harassed. She was questioned with regard to her knowledge of possible time card violations and indicated that to the best of her knowledge, when Ms. Reed was at work she was on the clock. She noted that on November 18, 1999 she saw Ms. Reed in the employing establishment, but was unable to recall the time of day. Appellant noted that she contacted the postal inspector the day after Thanksgiving to report that a carrier was throwing away mail. She indicated that she notified Mr. Dortch that she believed Inspector Pereira's presence at the employing establishment was in retaliation of Ms. Reed's filing of an Equal Employment Opportunity (EEO) complaint against the inspector. Appellant indicated that she heard Inspector Pereira yelling at Ms. Reed before he realized appellant was present. She indicated that viruses had been found on her computer after Inspector Pereira left the premises but acknowledged that anyone could have infected the computer.

An investigative memorandum dated April 6, 2000 documented the following incidents: Ms. Reed was at the employing establishment on December 8, 1999 at the request of appellant and was neither clocked in, nor was she being paid a night differential for the day in question or for the pay period 18 in 1999 through pay period 7 in 2000; that Ms. Reed reported late to work on two occasions and appellant failed to report the late arrivals; that the time cards for Ms. Reed disclosed numerous discrepancies between the hours worked and the hours for which she was paid; that Ms. Reed was paid at a higher level in 2000 than the correct level of pay which was caused by failure of management to review the payroll reports and which ultimately resulted in a loss of postal funds; and that the locks to the inspector's door were incorrectly changed without the appropriate authority.

The record also contained a job offer dated April 11, 2000, in which appellant was offered a position as a postmaster in Allen, Texas. By letter dated April 21, 2000, the postal manager in Allen, Texas rescinded the job offer of April 11, 2000 based upon review of the Inspection Service Investigation Memorandum. The proposed letter of warning dated April 26, 2000 indicated that appellant failed to properly perform her duties.¹ A letter of warning was issued May 24, 2000 because appellant had knowledge that Ms. Reed was working off the clock and failed to enforce postal policies, that appellant failed to maintain finance records in accordance with proper procedures, and that appellant was aware that the locks to the inspector's lookout gallery were compromised as early as March 16, 2000 and failed to report any irregularities to the proper authorities. Appellant's response to the climate control assessment noted that she was attempting to address the concerns of unfair treatment and favoritism of Ms. Reed, low morale at the employing establishment, lack of recognition and poor communication.

¹ The letter of warning detailed the following incidents: that on March 9, 2000 Ms. Reed worked while she was not clocked in; that Ms. Reed made numerous time card alterations of her actual time card and verified her own time card; and that on March 16, 2000 Ms. Reed improperly changed the lock to the inspection service entrance while an active investigation ensued.

In a report dated February 26, 2001, Dr. K. Thomas Varghese, an internist, noted his treatment of appellant for depression commencing August 22, 2000 and advised that her illness was exacerbated by stressors at her workplace. By report dated May 7, 2001, Dr. Manoochehr Khatami, a Board-certified neurologist and psychiatrist, noted that appellant was treated from May 12 to August 4, 2000 for depression. In a report dated May 11, 2001, Herman Jones, Ph.D., conducted a fitness-for-duty examination at the request of the employing establishment. He indicated that appellant believed she was being harassed and advised that a return to work would likely exacerbate her condition.

In a letter dated August 1, 2001, the Office of Workers' Compensation Programs advised appellant that the evidence submitted in support of her claim was insufficient to establish her claim and advised her of the type of evidence needed to establish her claim and requested she submit such evidence.

The employing establishment submitted a statement dated August 21, 2001, from Mr. Dortch, manager of Post Office Operations. Based upon the investigative memorandum dated April 6, 2000, he issued appellant a proposed letter of warning dated April 26, 2000. Appellant appealed the letter and on appeal the decision was affirmed. Mr. Dortch noted that, when the manager of the post office in Allen, Texas contacted him with regard to appellant being selected as a postmaster in that branch, he informed the postmaster that an investigative memorandum was issued regarding appellant's performance at her current position. He indicated that he did not tell appellant's clerk that she abandoned her office to attend an interview; rather he expressed his surprise that she made a trip to Dallas in inclement weather. Mr. Dortch stated that he did not instruct the clerk to change the locks on the postal inspector's gallery door, that he only discussed changing the locks because the keys were missing. He disagreed with appellant's allegation that the investigative memorandum was a witch hunt, noting that he found that the ultimate responsibility for time-keeping lay with appellant as postmaster and that she was derelict in performing her duties. Mr. Dortch noted that the workplace climate survey was not initiated by him and was never used against appellant. He did not encourage employees to file grievances against appellant. Mr. Dortch indicated that on one occasion a rural carrier asked if she could file a grievance and he referred her to a union representative for guidance. He noted that some employees called him directly regarding appellant and he passed their concerns onto the investigators. Mr. Dortch stated that appellant did not request a less stressful job when she returned to work in May 2001 and opined that her illness was not caused by harassment by him or other members of management; rather it was brought on because of her failure to perform her core duties as postmaster.

By decision dated January 29, 2002, the Office denied appellant's claim for compensation on the basis that she failed to establish that the claimed injury occurred in the performance of duty. In a letter dated February 11, 2002, appellant requested an oral hearing that was held on October 23, 2002. At the hearing appellant testified that she filed an EEO complaint, but that a final decision had not been issued.

In a decision dated January 7, 2003, the hearing representative affirmed the January 29, 2002 decision.

The Board finds that the evidence fails to establish that appellant 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.² 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.³

Appellant 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.⁴ 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.⁵

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.⁶ 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.⁷

Appellant alleged harassment on the part of her supervisor. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ However, for harassment to give rise to a compensable disability under the Act there must be

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

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

evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁹ Appellant alleged that her supervisor harassed her after a November 26, 1999 telephone call to the inspection service to report an incident of a rural carrier suspected of throwing mail away and that thereafter, the inspector investigating this incident did not return appellant's telephone calls and came into the office shouting at her. However, the Board notes that there was no evidence in the record to support this contention and no witnesses to this occurrence. Rather, the record supports that there was an investigation as to whether a carrier was disposing of mail, but there was no evidence that appellant was investigated or harassed with regard to this matter.

Appellant further alleged that she was harassed by her manager Mr. Dortch, when he indicated to a coworker that she had abandoned her office for another job interview, after the release of the workplace climate survey and that Mr. Dortch encouraged other employees to file grievances against appellant. Mr. Dortch, however, refuted appellant's allegations and she provided insufficient evidence that these incidents of alleged harassment occurred. They do not constitute compensable factors of employment.¹⁰

Appellant's other allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹¹ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act, as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹²

Appellant alleged that she was wrongfully investigated by the employing establishment. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially assigned employment duties are not considered to be employment factors.¹³ Appellant also alleged that her job promotion was wrongfully rescinded based on the results of the investigation into her conduct. The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties, but rather

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

¹⁰ *Id.*

¹¹ *See Thomas D. McEuen*, *supra* note 3.

¹² *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹³ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

constitute his or her desire to work in a different position.¹⁴ The Board finds that a review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of her were unreasonable.¹⁵ Additionally, the Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.¹⁶ Appellant did not submit evidence supporting her claims that the employing establishment committed error or abuse in investigating her. She has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations and thus, has not established administrative error or abuse.

Appellant also alleged that she was wrongfully issued a letter of warning on April 26, 2000 which was affirmed on May 24, 2000. However, the record reveals that the incidents in the letter of warning issued May 24, 2000 were documented in the investigative memorandum issued by the postal inspector on April 6, 2000. The letter of warning set forth the following findings; that appellant had knowledge that Ms. Reed was working off the clock and failed to enforce employing establishment's policies; that she failed to properly maintain the finance records in accordance with proper procedures; and that appellant was aware of the locks to the inspector's lookout gallery were compromised as early as March 16, 2000 and failed to report any irregularities or offenses to the proper authorities.¹⁷

In conclusion, the Board finds that, as appellant has not established a compensable employment factor, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.¹⁸

¹⁴ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁵ *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

¹⁶ *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001).

¹⁷ *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988) (although the handling of disciplinary actions, evaluations and leave requests 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).

¹⁸ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated January 7, 2003 and January 29, 2002 are affirmed.

Dated, Washington, DC
September 26, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member