

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CYNTHIA D. SIMS and U.S. POSTAL SERVICE,  
POST OFFICE, Birmingham, AL

*Docket No. 03-1779; Submitted on the Record;  
Issued September 23, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On July 17, 2001 appellant, then a 44-year-old manager, filed an occupational disease claim alleging that she sustained an adjustment disorder with mixed anxiety and depressed mood due to factors of her federal employment. Appellant stopped work on June 18, 2001.

By decision dated December 12, 2001, 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. On January 4, 2002 she requested a hearing before an Office hearing representative. A hearing was held on September 24, 2002. In a decision dated January 10, 2003, the hearing representative affirmed the Office's December 12, 2001 decision after finding that appellant had not established any compensable employment factors.

By letter dated February 10, 2001, appellant requested reconsideration of her claim. By decision dated May 20, 2003, the Office denied modification of its prior merit decision.

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 his 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.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

In this case, appellant primarily attributed her stress to harassment and discrimination by Ricardo H. Archbold, her supervisor.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

Appellant related that she began experiencing harassment in July 1997 when Mr. Archbold denied her request to repost a vacancy. She further attributed her stress to the following: on June 8, 1998 she entered into a discussion with Mr. Archbold which "escalated to loud shouting, badgering and intimidation in my office"; on November 12, 1998 Mr. Archbold questioned her about a leave decision for a subordinate in a derogatory manner; on

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

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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

<sup>6</sup> *Id.*

<sup>7</sup> Mr. Archbold worked at the employing establishment as a financial manager.

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

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

November 24, 1998 Mr. Archbold told her she would not complete performance evaluations on those that she supervised since she was on a detail; on December 1998 Mr. Archbold did not provide her a cash award; and on July 21, 1999 Mr. Archbold did not support her management decision about a subordinate's performance. Appellant further related that, on August 1999, she was forced to make a long trip back to her workstation from a detail in another town to oversee the completion of an assignment.<sup>10</sup> On January 22, 2001 when Mr. Archbold returned from a detail, appellant related that his harassment of her increased. On May 9, 2001 appellant stated that Mr. Archbold was angry that she was away from her desk and that he could not find her and, on June 1, 2001, he requested that she support her sick leave request with medical documentation. Appellant stated that, at a mediation on June 13, 2001, Mr. Archbold said that she repeatedly called in sick.<sup>11</sup> She also related that, on June 1, 2001, Gloria Tyson telephoned her at home and "told her to 'hang in there' until she was able to take care of the situation with [Mr.] Archbold."

In response to appellant's allegations, a manager at the employing establishment, presumably Mr. Archbold,<sup>12</sup> related that, on July 29, 1997, after appellant questioned the ability of applicants for a position, he told her that he would support her decision about the candidates. Mr. Archbold further related that, on June 8, 1998, he did not shout at appellant but instructed her to "follow-up on action items involving her department" and that he questioned her about leave on November 12, 1998 but made no derogatory comments. He also stated that, on November 24, 1998, during performance evaluations, appellant was on a detail and requested that a coworker complete her subordinates' evaluations. Mr. Archbold noted that appellant did not receive a performance award in December 1998 because her staff missed deadlines. He also noted that, on July 21, 1999, appellant disciplined an employee who had requested assistance in completing an assignment. Regarding appellant returning from a detail to complete an assignment, Mr. Archbold indicated that he had requested that she wait one week, until the project's completion, to take the detail. He stated that she had to return from the detail to cover for a coworker, whose spouse had died. Mr. Archbold noted that, when he returned from a detail in January 2001, appellant did not fully update him on the "status of events" in the department. He further stated that, on May 9, 2001, he was preparing to leave for the airport and could not find appellant. Mr. Archbold related, "All I asked her to do is let someone know if she is going to be gone for an extended period.... At no point was there every [sic] any confrontation." Mr. Archbold next indicated that, on June 1, 2001, appellant "was asked to provide evidence of being sick because of a pattern she had formed in requesting leave whenever the budget department was short handed or whenever critical deadlines needed to be met."

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<sup>10</sup> Appellant's return to work to complete an assignment constitutes the performance of her employment duties. However, appellant contention is that it demonstrates harassment by Mr. Archbold rather than stress arising from the performance of her work duties. Further, as discussed *infra*, Mr. Archbold related that he requested that appellant wait until the assignment was completed before taking the detail. Therefore, it appears to be appellant's choice to go on the detail prior to completing the assignment and, thus, any stress arising from the need to return to her regular workstation would be considered self-generated.

<sup>11</sup> Appellant indicated that she had over 1,000 hours of sick leave but did not submit any evidence, such as leave records, to verify the amount of her sick leave.

<sup>12</sup> The statement is not signed.

In this case, appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.<sup>13</sup> In support of her claim, appellant submitted witness statements as well as declarations and depositions provided for her Equal Employment Opportunity discrimination case against the employing establishment. However, none of the statements are sufficiently detailed to support any specific instances of harassment by Mr. Archbold toward appellant. In a statement dated September 28, 2001, Willette Sandridge, a coworker, related that, on May 9, 2001, Mr. Archbold spoke with appellant for three to five minutes and asked her to let him know when she was away from her desk. In a deposition dated July 23, 2002, Peter C. Marcoux, a manager of labor relations at the employing establishment, in response to a question as to whether appellant had informed him that Mr. Archbold shouted at or belittled her, related that he remembered receiving an email about slamming doors but had no recollection of additional incidents. He further related that Mr. Archbold was detailed, due to his dissatisfactory performance. In a deposition dated August 1, 2002, Gloria Tyson stated that appellant complained about her working relationship with Mr. Archbold and told her that he yelled at her and berated her. She indicated that she spoke with Mr. Archbold generally about the behavior expected of him in his position but did not specifically mention appellant in the discussion. In a statement dated September 20, 2002, the Reverend Cornelius Cummings, appellant's counselor, described appellant's version of events. Artemise Jones provided a September 23, 2002 declaration in which she related,

“Specifically, I observed [Mr.] Archbold harass and humiliate female employees by harshly criticizing them in front of others, belittling their performance in front of subordinates and speaking disrespectfully to them in meetings. Moreover, [appellant] even expressed to me that she became physically ill whenever [Mr.] Archbold would come around. In my opinion, [Mr.] Archbold did not respect or appreciate his female subordinates.”

In a declaration dated September 24, 2002, Parthenia Norfleet related that appellant did not abuse sick leave. She further stated, “On at least three or four occasions, I witnessed [Mr.] Archbold speak to [appellant] in an unprofessional manner. In my opinion, [Mr.] Archbold would not let [appellant] say anything during these conversations.”

In this case, while appellant has submitted some witness statements generally stating that Mr. Archbold harassed or criticized appellant or other female employees, the statements fail to identify any specific statements made or actions taken by Mr. Archbold toward appellant at a particular time and place. Thus, the witness statements fail to support any specific instances of harassment by Mr. Archbold toward appellant.<sup>14</sup> Appellant, therefore, has not established a compensable employment factor under the Act with respect to the claimed harassment or discrimination.

Regarding appellant's contentions that Mr. Archbold shouted at her and belittled her, the Board has recognized the compensability of verbal altercations or abuse in certain

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<sup>13</sup> 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).

<sup>14</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

circumstances.<sup>15</sup> This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act. Appellant submitted witness statements supporting that she complained of shouting by Mr. Archbold; however, the witness statements do not provide any specific details of shouting or belittling remarks allegedly made by Mr. Archbold. At the hearing, appellant provided, as an example of Mr. Archbold's verbal abuse his repeatedly shouting "that [i]s your employee" at her, threatening to say that she was absent without leave and following her to her car "just yapping at me." However, appellant has not shown that the incident occurred as alleged or, if established, how this incident would rise to the level of verbal abuse or otherwise fall within coverage of the Act.<sup>16</sup>

Additionally, a review of appellant's allegations reveals that her frustration was due, at least in part, to interactions with Mr. Archbold regarding the performance of supervisory functions. An employee's complaints concerning the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.<sup>17</sup> This principle recognizes that a supervisor or manager in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.<sup>18</sup> In this case, appellant has not submitted sufficient evidence of error or abuse to substantiate that her supervisor acted unreasonably in the performance of his duties.

Appellant further contended that, when Mr. Archbold was on travel, she "worked extensively long hours, six and seven days a week, to meet deadlines." The Board has held that overwork can be a compensable factor of employment if substantiated by the record since it relates to assigned work duties.<sup>19</sup> However, as with all allegations, overwork must be established on a factual basis. In this case, Mr. Archbold, in a statement dated October 17, 2001, indicated that appellant was not overworked in her position and that she had adequate staff for her assignments. Appellant's performance appraisals show that she completed her assigned tasks in an exemplary manner. Appellant, therefore, has not established that she was overworked.

Appellant has not established any compensable employment factors under the Act. Therefore, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. As appellant has not established a compensable employment factor, the Board will not consider the medical evidence of record.<sup>20</sup>

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<sup>15</sup> See *Mary A. Sisneros*, 46 ECAB 155, 163-64; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>16</sup> See e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994); and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

<sup>17</sup> *Abe E. Scott*, *supra* note 16.

<sup>18</sup> *Id.*

<sup>19</sup> *Frank A. McDowell*, 44 ECAB 522 (1993).

<sup>20</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated May 20 and January 10, 2003 are affirmed.

Dated, Washington, DC  
September 23, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member