

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**JANET C. VINCENT, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Sandy, UT, Employer**

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**Docket No. 05-245  
Issued: April 1, 2005**

*Appearances:*

*C.B. Weiser, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On November 1, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 8 and September 10, 2004 merit decisions denying her claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On February 24, 2004 appellant, then a 52-year-old customer service manager, filed a traumatic injury claim alleging that she sustained an emotional condition in the performance of duty on February 23, 2004. Regarding the cause of the injury, she stated, "I was sent home from work as instructed by Leo McIsaac." Appellant stopped work on February 23, 2004.

In a statement accompanying her claim, appellant noted that on February 13, 2004 she emailed a note to her supervisor, Mr. McIsaac, expressing concern about her temporary assignment at the Orem location of the employing establishment. She asserted that the length of her workday, including the two-hour travel time each way between her home and Orem, caused her to fall asleep during her commute on several occasions. Appellant claimed that several days later Mr. McIsaac called her and told her to leave work and take her choice of either annual or sick leave. She alleged that he told her not to return to work until she obtained medical documentation explaining her work limitations. Appellant obtained medical documentation from her attending physician and dropped it off at the employing establishment on February 23, 2004. She claimed that Mr. McIsaac called another supervisor, Ken Jorgensen, at about 12:00 p.m. on February 23, 2004 and told him that he should direct her to leave work at 4:00 p.m. on that date and take annual leave.

On March 5, 2004 the Office requested that appellant submit additional factual and medical evidence in support of her claim.

In a statement dated March 10, 2004, Mr. Jorgenson stated that on January 17, 2004 he first learned of appellant's concerns about her work schedule. She advised him on January 18, 2004 that Mr. McIsaac had told her not to come to work until she was cleared for work by a medical doctor. Mr. Jorgenson asserted that, when appellant came to work on January 23, 2004 with a note from her personal physician, he called Mr. McIsaac, who indicated that appellant was not to return to work until she was cleared for work by both her personal physician and the employing establishment medical unit. Since she was already at the work site, Mr. McIsaac directed him to send appellant home. Mr. Jorgenson stated that she called him several times after February 23, 2004 about changing her work arrangements.

By decision dated April 8, 2004, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors.

An April 9, 2004 letter from an official with the injury compensation office of the employing establishment, addressed Mr. McIsaac's concern about appellant's health and had properly instructed her to go home and obtain medical documentation regarding her condition. The official contended that Mr. McIsaac did not commit error or abuse when he addressed her request for a work accommodation. The record also contains a February 23, 2004 letter in which Mr. McIsaac advised appellant that further medical documentation would be required before making a work accommodation to address her health concerns.

In a letter dated April 18, 2004, appellant claimed that the employing establishment failed to show proper concern for her safety and alleged that Mr. McIsaac harassed and discriminated against her when he sent her home on February 23, 2004. She asserted that the employing establishment unfairly required her to pay back leave after her continuation of pay claim was denied. Appellant alleged that Mr. McIsaac influenced this decision as a means of retaliating against her. She also claimed that she received an improper letter of warning from the employing establishment.

On April 18, 2004 appellant requested a review of the written record by an Office hearing representative. By decision dated and finalized September 10, 2004, an Office hearing representative affirmed the April 8, 2004 decision.

### **LEGAL PRECEDENT**

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.<sup>1</sup> 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.<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>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<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.*

## ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated April 8, 2004, the Office denied her claim on the grounds that she did not establish any compensable employment factors. By decision dated and finalized September 10, 2004, an Office hearing representative affirmed the April 8, 2004 decision. The Board must, thus, initially review whether these alleged incidents and conditions are established as compensable employment factors under the terms of the Act.

Appellant alleged that the employing establishment improperly handled her request for a work accommodation after she indicated that the length of her workday caused her to fall asleep while traveling to and from work while assigned to the Orem office. She asserted that her medical documentation should have been accepted and that she was improperly sent home from work on February 23, 2004. Appellant also claimed that the employing establishment unfairly required her to pay back leave after her continuation of pay claim was denied and that she received an improper letter of warning.

Regarding appellant's allegations that the employing establishment improperly handled her work accommodation, unfairly required her to pay back leave and engaged in an improper disciplinary action, 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.<sup>7</sup> Although the work accommodation requests, leave usage and disciplinary actions are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>8</sup> The Board has held 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.<sup>9</sup> Appellant has not submitted any evidence showing that the employing establishment committed error or abuse with respect to the above-described administrative matters. With respect to her work accommodation request, the record contains several documents which indicate that the employing establishment acted properly by requesting additional medical documentation and sending appellant home on February 23, 2004. Thus, she has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged harassment and discrimination by Mr. McIsaac during his handling of her work accommodation request and that he had influenced a decision regarding her claim for continuation of pay as a means of retaliating against her. 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

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<sup>7</sup> 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).

<sup>8</sup> *Id.*

<sup>9</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

employment factors.<sup>10</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>11</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish that she was harassed or discriminated against by Mr. McIsaac.<sup>12</sup> Appellant alleged that he engaged in actions which she believed constituted harassment and discrimination, but she provided no evidence, such as witness statements or the results of a grievance, to substantiate that the actions actually occurred.<sup>13</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

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.<sup>14</sup>

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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<sup>10</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>11</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>12</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>13</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>14</sup> 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated September 10 and April 8, 2004 are affirmed.

Issued: April 1, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member