United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket No. 06-2089**
	)	**Issued: February 21, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Northbrook, IL, Employer	)	

Appearances:
Mike Losuredo, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 7, 2006 appellant filed a timely appeal from a June 8, 2006 Office of Workers' Compensation Programs' merit decision which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

FACTUAL HISTORY

On December 1, 2005 appellant, then a 53-year-old city carrier, filed an occupational disease claim alleging that she developed acute anxiety and stress after she was harassed and threatened by management. She stopped work on November 9, 2005 and returned to work on December 5, 2005.

On November 10, 2005 appellant alleged that a pattern of harassment commenced on September 6, 2005 in which management verbally belittled and demeaned her in front of her coworkers. She cited an incident in which her supervisor informed her that her mail route did not warrant more than eight hours a day and that she would not be provided with auxiliary assistance. On October 26 and 27 and November 3 and 9, 2005 appellant's supervisors monitored and timed her mail route. On November 2, 2005 Frank Maravelias, supervisor of customer service, investigated her for incorrect mark-ups as a result of a customer inquiry. Appellant alleged that on November 3, 2005 she received inconsistent instructions from her supervisors when she requested 30 minutes of auxiliary assistance to deliver her mail route. She indicated that Mr. Maravelias authorized the auxiliary assistance but James J. Bushnell, supervisor of customer service, denied the assistance indicating that it was not warranted by her mail volume. Mr. Bushnell stated "this ain't going to happen everyday, I'll tell you that." On November 3, 2005 she was also instructed by Ronald K. Weddington, a supervisor, to deliver her route without delivery point sequence (DPS) mail and was later given the DPS mail to deliver which necessitated her request for auxiliary assistance. On November 9, 2005 Mr. Maravelias confronted her again about the incorrect mark-ups and called her a liar. He threatened to investigate every one of the first class cards. Appellant also made a general allegation that she was forced to work beyond her tolerance and that the employer failed to comply with her work restrictions.

On November 7 and 30, 2005 Dr. Steven P. Lammers, a Board-certified psychiatrist, noted that he had treated appellant since September 2000 for major depression. Appellant recently had a conflict with her supervisor and experienced stress and anxiety. In reports dated November 9 and 30, 2005, Dr. Stephen M. Kashian, a Board-certified internist, advised that appellant was seen for work-related stress and anxiety. He recommended that she take a leave of absence. Also submitted was an unsigned treatment note dated December 21, 2005, which advised that appellant experienced right shoulder impingement syndrome.

The employing establishment submitted a statement from an injury compensation specialist who controverted the claim and advised that the employing establishment denied harassing her. The employing establishment contended that appellant failed to establish any specific incident of error or abuse.

By letter dated January 24, 2006, the Office asked appellant to submit additional factual and medical information, including a detailed description of those employment factors or incidents she believed contributed to her illness. In a letter of the same date, the Office requested that the employing establishment address her allegations.

Mr. Bushnell, appellant's supervisor, indicated that on November 3, 2005 he informed the carriers of their current status with regard to workload and work hours. He refuted appellant's assertion that he threatened her. As delivery supervisor, Mr. Bushnell had the responsibility to inform appellant when her workload volume did not warrant auxiliary help. In a statement dated January 30, 2006, Mr. Maravelias advised that, on November 9, 2005, he met with appellant and her union steward to investigate a customer complaint that appellant was not properly delivering first class mail. He spoke with appellant twice regarding this matter. Mr. Maravelias initially instructed appellant to deliver the mail even if it was addressed to the "current resident" or "the family at the address." However, on November 8, 2005 the same

customer complained that appellant had again returned first class mail that was properly addressed. Appellant's response was that she "must have missed them again." Mr. Maravelias requested that appellant follow instructions and that he would review any future mark-ups from this customer. He denied calling appellant a liar or threatening her. In a statement dated February 1, 2006, Mr. Weddington indicated that, on November 3, 2005, he did not instruct appellant to leave the postal facility without DPS mail. He advised that DPS mail was the carriers' responsibility and appellant had left her DPS mail behind on several occasions. On November 3, 2005 he sent a coworker out to deliver this mail as a courtesy to appellant. Mr. Weddington indicated that he did not have a problem with appellant.

In a February 20, 2006 report, Dr. Lammers noted that appellant's depression was present for many years prior to his initial treatment of her. He indicated that she sought treatment from many healthcare professionals. During the past five years, appellant had experienced job-related stressors that caused flair-ups of depression symptoms, most recently in October and November 2005.

In a June 8, 2006 decision, the Office denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[1]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[2] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3] 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 under the Act.[4] When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of an in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[5]

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[5] *Lillian Cutler, supra* note 2.

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 under the Act. 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 Act. 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.[6]

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.[7] 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.[8]

ANALYSIS

Appellant alleged that her supervisors harassed and verbally demeaned her. She has not attributed her emotional condition to the requirements of her regular or specially assigned duties but to instances of administrative error or abuse. Appellant alleged a pattern of harassment commenced on September 6, 2005 in which she was belittled and demeaned in front of coworkers. This pertained to informing her that her mail route did not warrant more than eight hours a day and that she would not be provided with auxiliary assistance. To the extent that incidents alleged as constituting harassment by a supervisor are established as factual these may constitute employment factors.[9] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[10]

The factual evidence fails to support appellant's claim regarding harassment. Appellant's supervisor, Mr. Bushnell, indicated that on November 3, 2005 he informed all carriers, including appellant, of their status with respect to workload and work hours. He refuted appellant's allegation that he threatened her. Mr. Bushnell indicated that as delivery supervisor he had the responsibility to inform appellant when her mail volume did not warrant auxiliary help. The

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

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

[8] *Id.*

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

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

factual evidence fails to support appellant's claim that she was harassed by Mr. Bushnell on that date.[11]

Appellant alleged that, on November 9, 2005, Mr. Maravelias confronted her for a second time about incorrect mark-ups. He allegedly called her a liar and threatened her stating that he was going to investigate every one of the first class cards and that she "better hope that no one is occupying them." Appellant did not submit evidence or witness statements in support of her allegation. Her supervisor and manager denied that they threatened or harassed appellant. General allegations of harassment are not sufficient to establish specific instances as factual.[12] Appellant has not submitted sufficient evidence to establish verbal abuse or error by her supervisor.[13] Although she alleged that her supervisors engaged in actions which she believed constituted harassment, she provided no corroborating evidence, or witness statements to establish her allegations.[14] Mr. Maravelias has refuted such allegations. On January 30, 2006 Mr. Maravelias indicated that, on November 9, 2005, he met with appellant and her union steward to investigate a customer complaint that appellant was not properly delivering first class mail. He spoke with appellant twice regarding this matter and initially instructed appellant to deliver the mail even if it was addressed to the "current resident" or "the family at the address." On November 8, 2005 the same customer again complained that appellant had returned first class mail that was properly addressed. Mr. Maravelias requested appellant to follow instructions and informed her that he would review any future mark-ups from this customer. He denied calling her a liar or threatening her. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

To the extent that appellant alleged a verbal or physical threat by Mr. Bushnell and Mr. Maravelias, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[15] The Board finds that the facts of the case, noted above in the analysis of the allegation of harassment, does not reveal that appellant's superior threatened her or acted unreasonably in view of appellant's conduct. Appellant has not otherwise shown how supervisory comments or actions rose to the level of verbal abuse or otherwise fell within coverage of the Act.

Other allegations by appellant regarding her work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,[16] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is

[11] *See Michael A. Deas*, 53 ECAB 208 (2001).

[12] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

[13] *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).

[14] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[15] *Charles D. Edwards*, 55 ECAB 258 (2004).

[16] *See Thomas D. McEuen, supra* note 6.

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 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.[17]

Appellant also alleged that her supervisors monitored and timed her mail route and reviewed her mark-up mail. Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.[18] The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Mr. Maravelias explained that he investigated a customer complaint that appellant was not delivering first class mail that was properly addressed. He indicated that he spoke with appellant twice regarding this matter and informed him that he would review any future mark-ups from this customer. The Board finds that the evidence does not show that the employing establishment acted unreasonably in its effort to monitor appellant's work as a way of improving her job performance.

On November 2, 2005 Mr. Maravelias investigated appellant for incorrect mark-ups as a result of a customer inquiry. However, it appears from the record that Mr. Maravelias was investigating two complaints by a customer that appellant was not delivering first class mail that was properly addressed. To avoid any future mistakes with regard to mark-ups for this customer, he stated that he would review appellant's work. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.[19] Although appellant alleged that the employing establishment erred and acted abusively in this matter, she has not provided sufficient evidence to support her allegation. Appellant has not shown that the employing establishment's actions in connection with its investigation of her delivery of first class mail was unreasonable. Appellant alleged that his supervisor wrongfully investigated her for incorrect mark-ups but she provided no witness statements to establish that such action was unreasonable.[20] Instead, the employing establishment explained the reasons why it took its actions and denied any disparate treatment of appellant. Appellant has not established a compensable employment factor in this respect.

She alleged that on November 3, 2005 she received inconsistent instructions from her supervisors when she requested 30 minutes of auxiliary assistance to deliver her mail route.

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

[18] *See Dennis J. Balogh*, 52 ECAB 232 (2001); *see also John Polito*, 50 ECAB 347 (1999).

[19] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[20] *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

Appellant stated that Mr. Maravelias authorized the auxiliary assistance but that Mr. Bushnell denied her request. She alleged that on another occasion she was instructed by Mr. Weddington to deliver her mail route without DPS mail but was later given the DPS mail to deliver which forced her to request auxiliary assistance. However the Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and 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.[21] Appellant presented insufficient evidence to support that the employing establishment erred or acted abusively with regard to these allegations. The record indicates that Mr. Bushnell, as delivery supervisor, had the responsibility to inform appellant that on November 3, 2005 her workload volume did not warrant auxiliary help. Mr. Weddington indicated that on November 3, 2005 he did not instruct appellant to leave the postal facility without the DPS mail. He noted that appellant left her DPS mail behind on several occasions and on November 3, 2005 he sent a coworker to deliver this mail as a courtesy to her. The evidence indicates that the employing establishment acted reasonably. Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant also alleged that she was forced to work beyond her tolerance and that the employer failed to comply with her work restrictions. She indicated that she was physically handicapped from a previous work-related injury and, although she did not have designated work restrictions, she was limited to work 8 hours per day and 40 hours per week. Appellant indicated that she was advised on numerous occasions that her mail volume did not warrant auxiliary help even though she had to deliver a full gurney of parcels, eight trays of DPS mail and numerous accountable mail. The Board has held that assignment of duties beyond an employee's work tolerance limitations may be a compensable factor of employment.[22] However, appellant has not provided sufficient evidence to establish that the employing establishment assigned her duties beyond her work limitations. She failed to provide documentation from any physician indicating that she had work restrictions from a prior work injury and or evidence that her employer failed to provide her with light duty when presented with documentation. The Board finds that there is insufficient evidence to establish that appellant worked beyond her tolerance.

The Board finds that appellant failed to establish a compensable factor pertaining to her allegation that the Office failed to assist her in handling her compensation claim.[23]

[21] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[22] *See Kim Nguyen*, 53 ECAB 127 (2001).

[23] 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).

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board