United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 07-1537**
	)	**Issued: February 1, 2008**
U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 17, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 20, 2006 which denied her claim for an emotional condition and a May 4, 2007 decision which denied further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied her request for reconsideration without a merit review.

FACTUAL HISTORY

On June 8, 2006 appellant, then a 46-year-old mail processing clerk, filed an occupational disease claim alleging that she developed an emotional condition due to discrimination, harassment and slandering by her coworkers and supervisors which created an unsafe work environment. She continued to work until January 11, 2007 and then stopped.

On September 20, 2006 the Office asked appellant to submit evidence, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. The Office also requested that the employing establishment address appellant's allegations.

In a September 11, 2006 statement, Sheila M. Smith, manager of customer service, noted that she spoke to appellant about bringing all of her personal items to the workroom floor, including picture frames, figurines and shoes in tubs. She received a complaint from a mail truck driver who noted that he almost hit appellant in the parking lot while she was exercising. Ms. Smith spoke to appellant about her work habits when sorting flats and her constant communication with other employees which stopped her from performing her duties. She indicated that appellant believed that she gave preferential treatment to another employee, Rey Villuaeva, a union steward. On September 22, 2006 Sharon Faust, an injury compensation specialist, controverted appellant's claim.

In an October 20, 2006 decision, the Office denied appellant's claim finding that the claimed emotional condition did not arise in the performance of duty. The Office noted that appellant failed to establish a factual basis for the claim by supporting her allegations with any specific, substantive and probative evidence.

Appellant submitted an undated reconsideration request received on March 8, 2007. On January 31, 2007 she noted that she called her supervisor requesting annual leave from January 31 to February 28, 2007. In a statement dated February 19, 2007, appellant asserted that she was discriminated and retaliated against since September 22, 2005 because she was an African American woman who was diagnosed with obsessive compulsive personality disorder. On February 21, 2007 she responded to a letter of warning dated January 31, 2007, and advised that she did not receive the letter until February 10, 2007 and was awaiting information on retirement. Appellant indicated that the letter provided her with five days to respond; however, she did not receive it until 10 days after it was mailed. In a letter dated February 24, 2007, she responded to a letter scheduling a pre-disciplinary interview. Appellant advised that she provided adequate documentation to justify her continued absence and advised her supervisor to obtain any additional information from the employing establishment medical unit. She asserted that, on September 22, 2005, Maria Elena Ordaz, a supervisor of distributions operations, caused her mental breakdown. She further alleged that Lilia Trest, a supervisor of distributions operations, abused, betrayed, criticized, discriminated, harassed, humiliated, intimidated, mocked and slandered her. Appellant indicated that Ms. Trest sent threatening letters to her and that her supervisors and coworkers caused a hostile work environment in which she could not continue to work.

Appellant submitted service pins dated November 28, 2005 and September 14, 2006 for saving sick leave and for 25 years of government service, an honorable discharge from the Air Force and a social security ruling granting her a disability retirement. Delores Osborn, a counselor, submitted reports dated September 1, 2006 and March 1, 2007. She treated appellant since October 12, 2005 for work-related anxiety and stress. Appellant reported that she was a postal employee for 20 years and asserted that her supervisors and coworkers harassed her and were not reprimanded for their behavior and that a supervisor exhibited unfair management practices. In a September 19, 2006 report, Dr. Marlene L. Sanchez, a Board-certified internist,

indicated that appellant had been a patient since October 2001 with a history of abnormal mammograms, hysterectomy, chondromalacia of the patella, hypertension, obesity, hernia and adjustment reaction. Appellant submitted an Equal Employment Opportunity (EEO) complaint prehearing summary dated January 18, 2007 and an EEO complaint dated February 12, 2007. She alleged that Mr. Villuaeva, a coworker and union steward, was given preferential treatment and was never required to perform his job duties. Appellant also alleged that management permitted Mr. Villuaeva to put his union duties above his work duties and that he intimidated and influenced the supervisors. She asserted that she was discriminated against and harassed by her coworkers and supervisors. A report from Dr. Patricia Mahoney, a general surgeon, dated February 22, 2007, advised that appellant would have surgery on March 1, 2007.

The employing establishment submitted an EEO complaint witness list dated December 4, 2006, noting that Ms. Ordaz would testify about her reasons for conducting a pre-disciplinary interview with appellant on September 22, 2005 and Ms. Trest would testify as to appellant's job performance. The employing establishment submitted a January 2, 2007 investigative interview schedule prepared by Ms. Trest noting that an interview was scheduled on January 10, 2007. Ms. Trest submitted a letter of warning issued to appellant on January 31, 2007 for an unacceptable attendance record and failure to maintain attendance requirements of her position for the period August 24, 2006 to January 8, 2007. On February 15, 2007 Ms. Trest issued a letter of warning based on appellant's unsubstantiated absence from work since January 11, 2007. She requested that appellant either return to work with a medical certificate substantiating her absence or provide justification to continue her absence from work. The Office subsequently received a February 16, 2007 letter from Angle D. Burns regarding a congressional inquiry into appellant's claim and noted that appellant was issued a letter of warning on January 31, 2007 for unacceptable attendance record and failure to maintain attendance requirements of her position.

In a May 4, 2007 decision, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

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

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

[2] 28 ECAB 125 (1976).

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 his employment duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[5] 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 his 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 his 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 -- ISSUE 1

Appellant alleged that she developed an emotional condition due to the daily abuse, discrimination and harassment, by her coworkers and supervisors. To the extent that incidents alleged as constituting harassment or discrimination by a supervisor or coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[9] However, for harassment to give rise to a compensable

[3] 5 U.S.C. §§ 8101-8193.

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

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

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

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 allegations of harassment. The employing establishment submitted a statement from Ms. Smith, manager of customer service, dated September 11, 2006. She addressed appellant's allegations, including that of favorable treatment for Mr. Rey, but denied harassing or discriminating against her. Ms. Smith advised that she spoke to appellant about bringing personal items onto the workroom floor and about her work habits when sorting flats, including constant communication with other employees which stopped her from performing her duties. She noted receiving a complaint from a mail truck driver who noted that he almost hit her while she was exercising in the parking lot.

In this case, appellant has not submitted sufficient evidence to establish harassment or discrimination treatment by her supervisor.[11] Although appellant alleged that her supervisors and coworkers discriminated and retaliated against her and engaged in actions which she believed constituted harassment, she provided no corroborating evidence, or witness statements to establish her allegations.[12] Ms. Smith has refuted such allegations. The Board notes that there is no other evidence to substantiate appellant's allegations. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment or discrimination.

To the extent that appellant alleged a verbal abuse by her supervisors or coworkers, 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.[13] 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 or coworkers verbally abused or slandered her or acted unreasonably. Appellant provided no corroborating evidence, or witness statements to establish her allegations.[14] Ms. Smith denied that she slandered, harassed or spoke to appellant in a hostile manner and there is no corroborating evidence to support that the employing establishment erred or acted abusively. 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.[15]

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

[11] *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).

[12] *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).

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

[14] *See William P. George*, *supra* note 12.

[15] *See Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

On September 20, 2006 the Office asked appellant to submit evidence, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. However, no additional information was submitted by appellant. Consequently, appellant has not established her claim for an emotional condition.[16]

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[17] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[18] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the [Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[19]

ANALYSIS -- ISSUE 2

Appellant's March 8, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office.

Appellant submitted several statements dated January 31 to February 27, 2007 and reiterated her allegations that her supervisors and coworkers discriminated and retaliated against her since September 22, 2005. However, her general statements and allegations do not show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

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[16] 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).

[17] 5 U.S.C. § 8128(a).

[18] 20 C.F.R. § 10.606(b).

[19] 20 C.F.R. § 10.608(b).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted service pins dated November 28, 2005 and September 14, 2006, an honorable discharge from the Air Force and a social security ruling granting her disability retirement. Additionally, she submitted reports from Drs. Sanchez and Mahoney who treated appellant for hypertension, obesity, adjustment reaction. However, this evidence is not relevant since the underlying issue is whether appellant has established a compensable employment factor.[20] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Also submitted were reports from Ms. Osborn, a counselor, dated September 1, 2006 and March 1, 2007, who treated appellant for work-related anxiety and stress which appellant asserted was caused by harassment from her supervisors and coworkers. However, these reports are not relevant as they merely repeat appellant's general allegations that were previously considered.[21] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Likewise, appellant submitted an EEO complaint dated February 12, 2007 essentially reiterated the general allegations, previously considered by the Office, of a coworker preferential treatment, discrimination, harassment and abuse by coworkers and supervisors. This evidence is not a basis for reopening the case for a merit review.[22]

Therefore, the Board finds that the Office properly determined that appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her March 8, 2007 request for reconsideration.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty. The Board further finds that the Office properly denied appellant's request for reconsideration of her case on its merits.

[20] *See Margaret S. Krzycki, supra* note 16 (where a claimant has not established a compensable employment factor, the Board has held that it need not address the medical evidence of record).

[21] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini,* 44 ECAB 657 (1993); *Eugene F. Butler,* 36 ECAB 393, 398 (1984); *Bruce E. Martin,* 35 ECAB 1090, 1093-94 (1984).

[22] *See Daniel Deparini, id.*

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2007 and October 20, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board